

TITLE XV: LAND USAGE

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CHAPTER 150: BUILDING REGULATIONS; CONSTRUCTION

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GENERAL PROVISIONS

§ 150.01 TITLE.

This chapter and all regulations supplemental or amendatory hereto shall be known as the Building Code of the Town of Spencer, and may be cited as such and will be referred herein as this chapter.

(Prior Code, Ch. 12, Art. 12.01(A))

§ 150.02 PURPOSE.

The purpose of this chapter is to provide minimum standards for the protection of life, limb, health, environment, public safety and welfare, and for the conservation of energy in the design and construction of buildings and structures.

(Prior Code, Ch. 12, Art.12.01(B))

§ 150.03 AUTHORITY.

The Building Commissioner is hereby authorized and directed to administer and enforce all of the provisions of this chapter. Whenever in this chapter, it is provided that anything must be done to the approval of or subject to the direction of the Building Commissioner or other officer designated by the Building Commissioner, it shall be construed to give the officer only the discretion of determining whether the rules and standards established by ordinance have been complied with. No provision shall be construed as giving any officer discretionary powers to require conditions not prescribed by ordinance or state codes, or to enforce ordinance provisions in an arbitrary or discriminatory manner.

(Prior Code, Ch. 12, Art.12.01(C))

§ 150.04 SCOPE.

The provisions of this chapter apply to the construction, alteration, repair, use, occupancy, maintenance, and addition to all buildings and structures, other than industrialized building systems or modular structures certified under I.C. 22-15-4, in the Town of Spencer. See Local Regulations Concerning Setbacks and §§ 31.20 *et seq.* and §§ 152.001 *et seq.* which cover the Zoning in the Town of Spencer.

(Prior Code, Ch. 12, Art. 12.01(D))

§ 150.05 DEFINITIONS.

(A) The definitions set forth in I.C. 22-12-1 of the following terms are hereby incorporated by reference in this chapter.

(B) For the purpose of this chapter, the following definitions shall apply unless the context indicates or requires a different meaning.

AGRICULTURAL PURPOSE. Farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, ornamental horticulture, olericulture, pomiculture, animal husbandry and poultry husbandry.

(I.C. 22-12-1-2)

BUILDING LAW. Any fire safety law, equipment law, or other law governing any of the following:

(a) Fabrication of an industrialized building system or mobile structure for installation, assembly, or use at another site;

(b) Construction, addition, or alteration of any part of a Class 1 or Class 2 structure at the site where the structure will be used; and

(c) Assembly of an industrialized building system or mobile structure that is covered by neither subdivision (1) nor (2) above.

(I.C. 22-12-1-3)

CLASS 1 STRUCTURE.

(a) Any part of the following:

1. A building or structure that is intended to be or is occupied or otherwise used in any part by any of the following:

a. The public;

- b. Three or more tenants; and/or
- c. One or more persons who act as the employees of another.

2. A site improvement affecting access by the physically handicapped to a building or structure described in division (a)1.a. above.

3. Any class of buildings or structures that the Commission determines by rules to affect a building or structure described in division (a)1 above, except buildings or structures described in divisions (b) through (e) below.

(b) Division (1)(a) above includes a structure that contains 3 or more condominium units (as defined in I.C. 32-25-2-9) or other units that:

- 1. Are intended to be or are used or leased by the owner of the unit; and
- 2. Are not completely separated from each other by an unimproved space.

(c) Division (1)(a) above does not include a building or structure that:

- 1. Is intended to be or is used only for an agricultural purpose on the land where it is located; and
- 2. Is not used for retail trade or is a stand used for retail sales of farm produce for 8 or less consecutive months in a calendar year.

(d) Division (a)1. above does not include a Class 2 structure.

(e) Division (a)1. above does not include a vehicular bridge.

(I.C. 22-12-1-4)

CLASS 2 STRUCTURE.

(a) Any part of the following:

1. A building or structure that is intended to contain or contains only 1 dwelling unit or 2 dwelling units unless any part of the building or structure is regularly used as a Class 1 structure; and

2. An outbuilding for a structure described in division (a) above, such as a garage, barn, or family swimming pool, unless any part of the outbuilding is regularly used as a Class 1 structure.

(b) Division (a) above, does not include a vehicular bridge.

(I.C. 22-12-1-5)

COMMISSION. The Fire Prevention and Building Safety Commission.

(I.C. 22-12-1-6)

CONSTRUCTION. Any of the following:

(a) Fabrication of any part of an industrialized building system or mobile structure for use at another site;

(b) Erection or assembly of any part of a Class 1 or Class 2 structure at the site where it will be used;

(c) Installation of any part of the permanent heating, ventilating, air conditioning, electrical, plumbing, sanitary, emergency detection, emergency communication or fire or explosion suppression systems for a Class 1 or Class 2 structure at the site where it will be used; and

(d) Work undertaken to alter, remodel, rehabilitate, or add to any part of a Class 1 or Class 2 structure; and

(e) Work undertaken to relocate any part of a Class 1 or Class 2 structure, except a mobile structure.

(I.C. 22-12-1-7)

CONTROL. The authority to create, change, or eliminate a condition or to initiate, regulate or terminate conduct that is based on any of the following:

(a) An agency, employment, or contractual relationship;

(b) A possessory or non-possessory ownership or leasehold interest in property; and

(c) A contractual right to possess or use property.

(I.C. 22-12-1-7)

DEPARTMENT. The Fire and Building Services Department.

(I.C. 22-12-1-9)

EQUIPMENT LAW. A statute or rule under this section, I.C. 22-13, or I.C. 22-15 that applies to the design, manufacture, fabrication, assembly, installation, alteration, repair, maintenance, operation, or inspection of a regulated amusement device, boiler, lifting device, or pressure vessel.

(I.C. 22-12-1-11)

FIRE SAFETY LAW. Any building law, equipment law, or other law safeguarding life or property from the hazards of fire or explosion.

(I.C. 22-12-1-13)

FIRE TERRITORY. The participating unit that is responsible for providing fire protection services within the territory established under I.C. 36-8-19.

(I.C. 22-12-1-12)

INDUSTRIALIZED BUILDING SYSTEM.

(1) Any part of a building or other structure that is in whole or in substantial part fabricated in an off-site manufacturing facility for installation or assembly at the building site as part of a Class 1 structure, a Class 2 structure, or another building or structure.

(2) However, the term does not include a mobile structure or a system that is capable of inspection at the building site.

(I.C. 22-12-1-14)

LAW. Any statute, rule, ordinance or other regulation.

(I.C. 22-12-1-15)

MANUFACTURED HOME. As set forth in 42 U.S.C. §§ 5401 *et seq.* as it existed on January 1, 2007, a structure, transportable in one or more section, which, in the traveling mode, is 8 body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that the term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this chapter; and except that such term shall not include any self-propelled recreational vehicle.

(I.C. 22-12-1-16)

MOBILE STRUCTURE.

(a) Any part of a fabricated unit that is designed to be:

1. Towed on its own chassis; and
2. Connected to utilities for year-round occupancy or use as a Class 1 structure, a

Class 2 structure, or another structure.

(b) The term includes the following:

1. Two or more components that can be retracted for towing purposes and subsequently expanded for additional capacity; and
2. Two or more units that are separately towable but designed to be joined into 1 integral unit.

(I.C. 22-12-1-17)

PERSON. An individual, corporation, partnership, unincorporated association, or governmental entity.

(I.C. 22-12-1-18)

STRUCTURE. Includes swimming pools, signs and sign supports and fences.

(I.C. 22-12-1-24) (Prior Code, Ch. 12, Art. 12.01(E))

§ 150.06 RULES; ADOPTED BY REFERENCE.

(A) The following rules, regulations and codes are hereby adopted by reference as the rules and regulations governing the construction and alternation of buildings and structures in the town, and these rules, regulations and codes shall include the most current editions thereof; as the same are published in the Indiana Register or the Indiana Administrative Code:

(1) State Building Code;

(2) State Building Code Standards;

(3) State Handicapped Accessibility Code;

(4) State Fire and Building Safety Standards (675 I.A.C. 13-1), originally published as 8 IR 1301 under that title, which incorporates by reference the National Fire Protection Association (NFPA) Standards;

(5) State Electrical Rules, IER, which identifies, amends and incorporates therein the National Electric Code, NEC;

(6) State Safety Code for Health Care Facilities, which identifies, amends and incorporates therein National Fire protection Association (NFPA) Standard, NFPA 99;

(7) State Plumbing Code, which identifies, amends and incorporates therein the Uniform Plumbing Code;

(8) State Mechanical Code, which identifies, amends and incorporates therein the Uniform Mechanical Code;

(9) State Flammable and Combustible Liquids and Gases Code, which identifies, amends and incorporates therein 8 National Fire Protection Association Standards;

(10) One and 2 family dwelling code of the state, which identifies, amends and incorporates therein the 1 and 2 Family Dwelling Code;

(11) State Energy Conversation Code, which identifies, amends and incorporates therein the model Energy Code; and

(12) State Swimming Pool Code.

(B) Copies of this code and rules, regulations and codes adopted herein by reference, are on file as required by law in the office of the Town Building Inspector.

(Prior Code, Ch. 12, Art. 12.01(F))

§ 150.07 SETBACK REQUIREMENTS.

(A) All buildings and structures shall be built, constructed, erected, set and/or placed on private and/or public property according to the requirements on setbacks established in this section.

(B) When applicable, all setbacks shall be measured from the inside of the sidewalk and/or street, road, alley or other public right-of-way. The “inside” shall mean the side towards or closest to the building or structure that is subject to the setback requirement.

(C) Setback from property lines shall be measured from the property line. The property line shall be the point where one person(s), firm(s), company(s), corporations(s), association(s), government(s), or other entity(s) real property begins.

The following setback requirements apply in all applicable zoning districts.

(1) *Sidewalks.* Where there are established and existing sidewalks, the minimum setback from the sidewalk shall be measured from the inside of the sidewalk:

- (a) All residential building or structures: 5 feet.
- (b) All commercial and/or business buildings or structures: 10 feet.
- (c) All industrial buildings or structures: 10 feet
- (d) All other buildings and structures: 10 feet.

(2) *No sidewalks.* Regardless of the building or zoning classification where there are no established or existing sidewalks, the minimum setback from the street, road, or other public right-of-way shall be 15 feet and shall be measured from the inside of the street, road or other public right-of-way. The minimum setback requirement for a building or structure from an alley shall be 3 feet from the public right-of-way.

(3) *Property lines.*

- (a) All residential buildings or structures: 5 feet.
- (b) All other buildings or structures regardless of building or zoning classification: 10 feet

(4) *Fences.*

(a) Property line fences may be built on the property line.

(b) All other locations:

1. Fences shall be installed and/or erected at least 6 inches from the inside of all established and existing sidewalks.

2. Where no sidewalk(s) exist, fences shall be installed and/or erected at least 10 feet measured from the inside of the street, road or other public right-of-way.

3. In alleys, fences shall be installed and/or erected 3 feet from the public right-of-way.

(5) *Utilities.*

(a) Utilities shall be set back at least 2 feet from the inside of all established and existing sidewalks.

(b) Where no sidewalks exist, utilities shall be set back at least 12 feet measured from the inside of the street, road or other public right-of-way.

(c) From an alley, utilities shall be set back at least 3 feet measured from the public right-of-way.

(d) This minimum distance shall be measured from the outer-most part of the utility.

(e) Utility in this subsection includes but is not limited to poles, towers, lines, wires, conduits, pipes, drains, meters, valves, and pumps but does not include buildings, structures or hydrants.

(a) Hydrants fall under the jurisdiction of the Fire Department of the town pursuant to Indiana State law.

(6) *Other.*

(a) Any object that is not specifically mentioned elsewhere in this section including but not limited to the following: flag poles, antennas, towers, satellite dishes, playhouses, birdbaths and other yard ornaments, shall be set back:

(1) A minimum of 0 feet from the property lines, 6 inches from existing sidewalks;

(2) A minimum of 10 feet from a road, street, or other public right-of-way where no sidewalk exists, and

(3) A minimum of 3 feet from an alley measured from the public right-of-way.

(b) However, this provision shall not apply where the object is not anchored to the ground, is easily moved and weighs less than 50 pounds. This subsection does not apply to utilities identified in the subsection above.

(Ord. 1993-02, passed 4-5-1993)

BUILDING PERMITS

§ 150.20 APPLICATION FOR PERMIT.

(A) No permit shall be issued for the foregoing purposes, unless the application for the permit is accompanied by a plat or sketch of the proposed location showing lot boundaries, and by plans and specifications showing all the work to be done.

(B) All plans for commercial building construction are under the authority of the State Fire Prevention and Building Safety Commissioner and must also be filed with the State Building Commissioner. No local commercial permits shall be issued hereunder until a copy of a release for construction from the State Building Commissioner is received by the Building Commissioner.

(C) One and 2 family residential dwellings will be solely under the jurisdiction of the Town Building Commissioner. The time period for use of a building permit shall run for 1 year from the date of issuance. If the building is not completed by then, the party shall re-apply paying only the renewal fee. However, the Building Commissioner shall from time to time extend the expiration time periods at his or her discretion.

(Prior Code, Ch. 12, Art. 12.02(A))

§ 150.21 PERMIT REQUIRED.

(A) A permit shall be obtained before beginning any construction, alteration, or repair of any building or structure, the value of which exceeds \$500, which involves or affects electrical, plumbing, ventilating, heating, air condition systems, or structural elements. This section shall not be interpreted to require a building permit:

- (1) For cosmetic repairs and or maintenance (e.g., floor coverings, painting or roofing); and
- (2) For the repair or maintenance of a private home performed by the occupant thereof.

(B) All permits shall be issued by the Building Commissioner, and all fees provided for it this subchapter shall be paid to the Clerk-Treasurer. All permits shall expire 1 year from the date of the original issue unless renewed or extended.

(Prior Code, Ch. 12, Art. 12.02(B))

§ 150.22 NON-ANCHORED SEMI-TRAILERS AND MOBILE HOMES.

(A) Any non-secure, portable semi-trailer, trailer or mobile home that has been on the same property for a period of more than 180 days without being moved from that property, must obtain a building permit and comply with all pertinent town codes.

(B) Each unit must be properly tied down and anchored in conformance to the town's mobile home requirements.

(C) The unit must also be properly skirted and maintained in good condition so as not to create an unsightly appearance or unsafe environment.

(D) Violations are subject to reasonable penalties imposed by the current town codes and ordinances in § 150.26.

(Ord. passed - -)

§ 150.23 ACCESSORY STRUCTURES, DETACHED GARAGES AND CARPORTS THAT REQUIRE A TOWN BUILDING PERMIT.

(A) *Portable single story units with less than a total of 120 square feet.* However, the structure must be properly anchored down by any tie down device that secures the mobile structure to the ground, so as to avoid lateral, vertical or uplift movement due to wind pressure from any direction. The structure must also contain no more than 15 AMP electrical service. Permanent heat and water supply sanitation are not permitted.

(B) *Single story units with monolithic footing containing less than 721 square feet (8 feet W x 18 feet D, 12 feet w x 12 feet).* The slab must contain a welded wire fabric or equivalent. The unit may contain 1 permanent heat and 1 water supply sanitation. All electrical, floors, exterior walls and/or roof systems and/or girders and headers shall comply with 1 and/or 2 family dwelling codes.

(C) *Note.* All stick built units must have prior approval by the Building Inspector and/or Commissioner to ensure that construction methods and materials used do not create an unsightly appearance or present a safety hazard. Plans and/or drawings along with materials list shall be submitted with all written requests prior to starting the project. Approval of the project shall be at the sole discretion of the Building Commissioner. However, a denial may be appealed to the Board of Zoning Appeals and the Town Council. Violations subject to reasonable penalties (demolition and momentarily) as imposed by the Town Council, not to exceed \$500.

(Ord. passed - -)

§ 150.24 WORK TO COMPLY WITH OTHER APPLICABLE REGULATIONS.

All work done under any permit issued under this subchapter shall be in full compliance with all other regulations pertaining thereto, and in addition to the fees for permits hereinafter provided for, there shall be paid the fees prescribed in those regulations.

(Prior Code, Ch. 12, Art. 12.02(C))

§ 150.25 FEES.

(A) The fees for all permits required under the provisions of this subchapter shall be the fees set forth below. All fees will be charged in even-dollar sums only.

<i>Type of Construction</i>	<i>Required Inspections</i>	<i>Permit Fee</i>
Class 1 Structures	Minimum of 3	\$0.20 square feet. Maximum \$6,000
Class 2 Structures	3-4	\$100 for up to 1,250 square feet and \$0.10 square feet for each square feet over. Maximum \$1,500
Additions and alterations*	1-3	\$0.10 square feet. Maximum \$1,500
Accessory buildings	1-2	\$0.05 square feet. Maximum \$750
Swimming pools	1	\$25
Electric service upgrade**	1	\$25
Plumbing/install or extend	1	\$25
Sidewalks/grading	2	\$25

Driveways	2	\$25
Fences	2	\$25
Moving of building	1	\$25
Demolition	1	\$25
Renewal Fee		\$25
<p>*Additions and alterations do not structurally alter an existing load bearing wall or foundation.</p> <p>**An electrical upgrade is any alteration to an electrical system requiring the disconnecting of electrical service to the structure in order to perform the electrical upgrade.</p>		

(B) Inspections: A fee of \$25.00 shall be charged for each required inspection (listed above).

(C) For unusually large or complex buildings or structures, the Building Inspector shall have the power to increase the number of required inspections as needed. The Building Commissioner shall in all cases designate the stage of construction when each required inspection must be requested by the permit holder. No concrete shall be placed for foundations without prior inspection. No electrical, structural, mechanical, plumbing, or thermal insulation work shall be covered prior to the inspection.

(D) Where additional inspections are required due to failure of the permit holder to have work ready for inspection at a designated state of construction, the Building Inspector shall have the power to assess a re-inspection fee of \$25 for each additional inspection.

(E) The Building Inspector shall submit routine reports as needed and an annual report (on or before January 31) to the Town Council of inspections performed and permit fees collected on all permits. The report shall include an analysis of inspections performed, permit fees collected, cost of inspection operations and recommendations for adjustment of required inspections and single inspection fees as necessary.

(Prior Code, Ch. 12, Art. 12.02(D), (Am. Ord. 2012-3, passed 11-5-12))

§ 150.26 EARLY START; ADDITIONAL FEE.

(A) Any person, firm, partnership, or corporation who knowingly starts construction prior to applying for and receiving a building permit shall be charged a fine. Said fine shall be assessed as follows:

1 st offense in a 3 year time frame	1 time the original permit fee
2 nd offense in a 3 year time frame	2 times the original permit fee
3 rd offense in a 3 year time frame	3 times the original permit fee

(B) There shall be a fee of \$25 for each additional inspection required, in additional to all other fees provided for in this chapter.

(Prior Code, Ch. 12, Art. 12.02(E))(Am. Ord. 2009-12, passed 6-1-2009)

§ 150.27 WAIVER OF FEE.

(A) The Town Council shall have the authority to waive all or any part of the fees required herein for the permit and or inspections.

(B) The determination for a waiver of all or part of the fees required by this subchapter for a building permit or inspection shall lay within the sole discretion of the Spencer Town Council.

(Prior Code, Ch. 12, Art. 12.02(F))

§ 150.28 REVIEW OF APPLICATION.

Prior to the issuance of any building permit under this subchapter, the Building Commissioner shall:

(A) Review all building permit applications to determine full compliance with the provisions of this subchapter;

(B) Review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding;

(C) Review building permit applications for major repairs within the flood plain area having special flood hazards to determine that the proposed repair:

- (1) Uses construction materials and utility equipment that are resistant to flood damage; and
- (2) Uses construction methods and practices that will minimize flood damage.

(D) Review building permit applications for new construction or substantial improvements within the flood plain area having special flood hazards to assure that the proposed construction, including prefabricated and mobile homes:

- (1) Is protected against flood damage;
- (2) Is designed (or modified) and anchored to prevent flotation, collapse, or lateral movement of the structure and flood damage; and

- (3) Uses construction methods and practices that will minimize flood damage.

(Prior Code, Ch. 12, Art. 12.02(G))

UNSAFE BUILDING LAW

§ 150.45 PURPOSE.

This subchapter includes the State Unsafe Building Law which is hereby adopted. For the purposes of this subchapter, the State Unsafe Building Law shall refer to the body of law in the state known as the Unsafe Building Law located at IC 36-7-9 et seq., as amended, replaced, and interpreted from time to time. This subchapter governs all proceedings within the town for the inspection, repair, and removal of unsafe buildings and premises. If the provisions of this subchapter conflict with the state statutory law, then the provisions of state law govern.

(Prior Code, Ch. 14, Art. I; Am. Ord. 2022-11, passed 7-5-2022)

§ 150.46 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context indicates or requires a different meaning.

COMMUNITY ORGANIZATION means a citizen's group, neighborhood association, neighborhood development corporation, or similar organization that:

- (1) has specific geographic boundaries defined in its bylaws or articles of incorporation and contains at least forty (40) households within those boundaries;
- (2) is a nonprofit corporation that is representative of at least twenty-five (25) households or twenty percent (20%) of the households in the community, whichever is less;
- (3) is operated primarily for the promotion of social welfare and general neighborhood improvement and enhancement;
- (4) has been incorporated for at least two (2) years; and
- (5) is exempt from taxation under [Section 501\(c\)\(3\)](#) or [501\(c\)\(4\) of the Internal Revenue Code](#).

CONTINUOUS ENFORCEMENT ORDER means an order that:

- (1) is issued for compliance or abatement and that remains in full force and effect on a property without further requirements to seek additional:

- (A) compliance and abatement authority; or
- (B) orders for the same or similar violations;
- (2) authorizes specific ongoing compliance and enforcement activities if a property requires reinspection or additional periodic abatement;
- (3) can be enforced, including assessment of fees and costs, without the need for additional notice or hearing; and
- (4) authorizes the enforcement authority to assess and collect ongoing costs for continuous enforcement order activities from any party that is subject to the enforcement authority's order.

DEPARTMENT refers to the building department authorized by ordinance to administer this chapter.

ENFORCEMENT AUTHORITY refers to the Building Commissioner.

HEARING AUTHORITY refers to the Spencer Town Board.

KNOWN OR RECORDED FEE INTEREST, LIFE ESTATE INTEREST, OR EQUITABLE INTEREST OF A CONTRACT PURCHASER means any fee interest, life estate interest, or equitable interest of a contract purchaser held by a person whose identity and address may be determined from:

- (1) an instrument recorded in the recorder's office of the county where the unsafe premises is located;
- (2) written information or actual knowledge received by the department (or, in the case of a consolidated city, the enforcement authority); or
- (3) a review of department (or, in the case of a consolidated city, the enforcement authority) records that is sufficient to identify information that is reasonably ascertainable.

KNOWN OR RECORDED SUBSTANTIAL PROPERTY INTEREST means any right in real property, including a fee interest, a life estate interest, a future interest, a mortgage interest, a lien as evidenced by a certificate of sale issued under IC 6-1.1-24, or an equitable interest of a contract purchaser, that:

- (1) may be affected in a substantial way by actions authorized by this chapter; and
- (2) is held by a person whose identity and address may be determined from:
 - (A) an instrument recorded in:
 - I. the recorder's office of the county where the unsafe premises is located; or
 - II. the office of the county auditor of the county where the unsafe premises are located in the case of a lien evidenced by a certificate of sale issued under IC 6-1.1-24;
 - (B) written information or actual knowledge received by the department (or, in the case of a consolidated city, the enforcement authority); or

(C) a review of department (or, in the case of a consolidated city, the enforcement authority) records that is sufficient to identify information that is reasonably ascertainable.

SUBSTANTIAL PROPERTY INTEREST means any right in real property that may be affected in a substantial way by actions authorized by this chapter, including a fee interest, a life estate interest, a future interest, a mortgage interest, or an equitable interest of a contract purchaser.

UNSAFE BUILDINGS a building or structure, or any part of a building or structure, that is:

- (1) in an impaired structural condition that makes it unsafe to a person or property;
- (2) a fire hazard;
- (3) a hazard to the public health;
- (4) a public nuisance;
- (5) dangerous to a person or property because of a violation of a statute or ordinance concerning building condition or maintenance; or
- (6) vacant or blighted and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of a statute or an ordinance;

is considered an unsafe building.

UNSAFE PREMISES the following are considered unsafe premises:

- (1) An unsafe building and the tract of real property on which the unsafe building is located.
- (2) A tract of real property, not including land used for production agriculture, that does not contain a building or structure or contains a building or structure that is not considered an unsafe building, if the tract of real property is:
 - (A) a fire hazard;
 - (B) a hazard to public health;
 - (C) a public nuisance; or
 - (D) dangerous to a person or property because of a violation of a statute or an ordinance.

(I.C. 36-7-9-2 and I.C. 36-7-9-4; Prior Code, Ch. 14, Art. II; Am. Ord. 2022-11, passed 7-5-2022)

§ 150.47 DECLARATION OF UNSAFE BUILDING OR UNSAFE PREMISES.

In accordance with authority provided by the Indiana Code, the Enforcement Authority may issue an order requiring any of the following:

- (1) The vacation of an unsafe building;

- (2) The sealing of an unsafe building against intrusion by unauthorized persons;
- (3) The extermination of vermin in and about the unsafe premises;
- (4) The removal of trash, debris, fire hazard material, or a public health hazard in and about the unsafe premises;
- (5) The repair or rehabilitation of an unsafe building to bring it into compliance with standards for building condition or maintenance required for human habitation, occupancy;
- (6) The demolition or removal of part of an unsafe building;
- (7) The demolition or removal of an unsafe building if the general condition of the building warrants removal or the building continues to require re-inspection and additional abatement action after an initial abatement action was taken pursuant to notice and order; and
- (8) Require the unsafe building sealed for a period of not more than ninety (90) days against intrusion by unauthorized persons and effects of the weather, exterior improvements to make the building compatible in appearance with other buildings in the area; and continuing maintenance and upkeep.

(I.C. 36-7-9-5; Prior Code, Ch. 14, Art. III; Am. Ord. 2022-11, passed 7-5-2022)

§ 150.48 NOTIFICATION TO OWNER.

(1) *Owner advised of condition.*

- (A) When the Enforcement Authority determines that a building or premises is in the condition that it creates an unsafe building or unsafe premises, it will notify the owner and occupant thereof of the violation.
- (B) Any order issued under this subchapter is valid for two (2) years from the date the notice was given unless a complaint requesting judicial review is filed, a contract for action required by the order is let a public bid, or a civil action is filed.
- (C) The enforcement authority may issue an order that modifies a previous order issued herein.

(2) *Notice Requirements.*

- (1) The order must contain the following:
 - i. The name of the person to whom the order is issued;
 - ii. The legal description or address of the property that is the subject of the order
 - iii. The action that the order requires

- iv. The time frame for correction which must be at least ten (10) days but not more than sixty (60) days.
- v. If a hearing is required, the date, time and place of the hearing and a statement that the person to whom the orders are issued is entitled to appear, with or without legal counsel, to present evidence, cross-examine opposing witnesses, and present arguments.
- vi. A Statement briefly indicating what action can be taken if the order is not complied with.
- vii. A statement indicating the obligation created by IC 36-7-9-27
- viii. The name, address, and telephone number of the enforcement authority.
- ix. A statement that the hearing authority may determine the property to be abandoned.

(3) If the order is for the demolition or removal of part or all of an unsafe building then the notice must be served upon each with a known or recorded substantial property interest.

(4) An order is final ten (10) days after notice is given, unless a hearing is required under §150.50 or a hearing is requested, in writing, by person holding a fee interest, life estate interest, mortgage interest, or equitable interest of a contract purchaser prior to the expiration of the ten (10) days.

(I.C. 36-7-9-5; 36-7-9-6; 36-7-9-7; 36-7-9-25; Prior Code, Ch. 14, Art. IV; Am. Ord. 2022-11, passed 7-5-2022)

§ 150.49 SERVICE OF ORDER, NOTICE OF HEARINGS, NOTICE OF BIDS, AND NOTICE OF CLAIMS.

(1) *Personal service.* If the names and addresses of the owner or other person(s) having an interest in the property, as secured by a recorded mortgage or written contract, can be found upon reasonable inquiry, a written copy of the order will be served on them personally or by leaving a copy at their last known place of residence. Service of the order will be shown by affidavit of the person serving it. If there is a question of the competency of the person to be served, a copy will also be served on his or her legal guardian or custodian.

(2) *Service by certified mail, return receipt requested.* If personal service cannot be made, but addresses are known, service may be made by using registered United States mail,

with return receipt requested.

- (3) *Service by publication of notice.* If personal service and/or service by certified mail, return receipt requested cannot be made and addresses are not known, notice of the order will be given by publication 2 times at least one week apart with the second being at least three (3) days before a hearing or any event described in the notice under §150.48 in the newspaper of general circulation.

(I.C. 36-7-9-25; Prior Code, Ch. 14, Art. VIII; Am. Ord. 2022-11, passed 7-5-2022)

§ 150.50 HEARINGS; ORDERS.

(1) Hearing.

(A) A hearing must be held relative to each order of the Enforcement Authority except for an order issued for sealing an unsafe building against intrusion by unauthorized persons, extermination of vermin, the removal of trash debris, fire hazardous material, or a public health hazard, or for the repair or rehabilitation of and unsafe building to bring it into compliance with standards for building condition or maintenance.

(B) A hearing under this subchapter must be held no earlier than ten (10) days after the notice is given under §150.48.

(C) The person to whom the order was issued, any person having a substantial property interest, or any other person with an interest in the proceedings may appear in person or by counsel at the hearing.

(2) Findings. At the conclusion of any hearing at which a continuance is not granted, the hearing authority must make findings and take action to:

(A) affirm the order;

(B) rescind the order; or

(C) modify the order, but unless the person to whom the order was issued, or counsel for that person, is present at the hearing, the hearing authority may modify the order in only a manner that makes its terms less stringent.

The record of the findings made and action taken by the hearing authority at the hearing shall be available to the public upon request. However, neither the enforcement authority nor the hearing authority is required to give any person notice of the findings and action.

- (3) If an order is affirmed or modified, the hearing authority shall issue a continuous enforcement order as defined in §150.46.
- (4) If, at a hearing, a person to whom an order has been issued requests an additional period to accomplish action required by the order and shows good cause for this request to be granted, the hearing authority may grant the request. However, as a condition for allowing the additional period, the hearing authority may require that the person post a performance bond to be forfeited if the action required by the order is not completed within the additional period.
- (5) Orders issued shall be recorded in the Office of the Owen County Recorder pursuant to the provisions of IC 36-7-9-26. If the order is to demolish part or all of a structure, or due to the failure to comply with an order, then any statements of recission or statements of public bid must also be recorded.

(I.C. 36-7-9-7; Prior Code, Ch. 14, Art. 10; Am. Ord. 20__ - ____, ____/____/20__)

§ 150.51 PERFORMANCE BONDS SCHEDULE

- (1) Performance bond amounts shall be at the discretion of the Hearing Authority based upon the estimated costs to comply as determined by the Hearing Authority. Performance bonds shall be forfeited if the action required by the order is not completed within the additional time granted to comply.
- (2) The maximum amount of performance applications applicable to this chapter are as follows:

Type of Structure/Action	Amount (not to exceed)
Sealing of an unsafe building	Ten Thousand Dollars (\$10,000)
Extermination of Vermin	Ten Thousand Dollars (\$10,000)
Removal of trash, debris, fire hazardous material	Ten Thousand Dollars (\$10,000)
Repair or rehabilitation of an unsafe building	Fifty Thousand Dollars (\$50,000)
Demolition of all or part of a non-residential accessory structure	Fifty Thousand Dollars (\$50,000)
Demolition of all or party of a residential structure	One Hundred Fifty Thousand Dollars (\$150,000)

Demolition of all or part of a commercial structure	Two Hundred Fifty Thousand Dollars (\$250,000)
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(I.C. 36-7-9-7 and 36-7-9-18.1; Ord 2022-11, passed 7-5-2022)

§ 150.52 EMERGENCY ACTION

- (1) If the Enforcement Authority finds it necessary to take emergency action in order to protect the life, safety or property it may take action without issuing an order or giving notice. This emergency power is limited to removing only the immediate danger.
- (2) The costs associated with such emergency action may be recovered by filing a civil action in the court of appropriate jurisdiction. Additional penalties to include reasonable attorney fees and court costs incurred by the town for collection of the account.

(I.C. 36-7-9-9; Ord 2022-11, passed 7-5-2022)

§ 150.53 ENFORCEMENT OF ORDERS

- (1) The Enforcement Authority may hire a contractor to complete the work required or perform the work by its own workforce and equipment under an order issued under §150.50 if the action is to seal an unsafe building against intrusion by unauthorized persons; extermination of vermin in and about the unsafe premises; or removal of trash, debris, if:
 - (A) The order has not been complied with in the time frame established by the order;
 - (B) A hearing has not been requested or the order was affirmed after the requested hearing, or if the order is not currently under review;
 - (C) The work estimated is less than ten thousand dollars (\$10,000); and
 - (D) Notice has been given pursuant to I.C. 36-7-9-11.
- (2) The Enforcement Authority may hire a contractor to complete the work required under an order issued under §150.50 if the action is for the extermination of vermin in and about the unsafe premises; removal of trash, debris, fire hazardous material or a public health hazard; or the repair or rehabilitation of an unsafe building to bring it into compliance with standards for building condition or maintenance, if:
 - (A) The order has not been complied with in the time frame established by the order;

- (B) A hearing has not been requested or the order was affirmed after the requested hearing, or if the order is not currently under review;
 - (C) The work estimated is to exceed ten thousand dollars (\$10,000);
 - (D) Notice has been given pursuant to I.C. 36-7-9-11; and
 - (E) The work has been let for public bid to a contractor licensed and qualified under law.
- (3) The Enforcement Authority may hire a contractor to complete the work required under an order issued under §150.50 if the action is to vacate an unsafe building or demolish or remove a part or all of an unsafe building and if the order has been served pursuant to the provisions of §150.49, has been served on each person having a known or recorded substantial property interest or present a possessory interest in the unsafe premises, and the work has been let for public bid to a contractor licensed and qualified under law.
- (4) The costs associated with the enforcement of orders may be recovered by filing a civil action in the court of appropriate jurisdiction. Additional penalties to include reasonable attorney fees and court costs incurred by the town for collection of the account
(I.C. 36-7-9-10, I.C. 36-7-9-11; Ord 2022-11, passed 7-5-2022)

§ 150.54 UNSAFE BUILDING FUND

- (1) The Unsafe Building Fund is established and shall be used pursuant to the provisions of I.C. 36-7-9-14.
- (2) Any monies forfeited under the provisions of I.C. 36-7-9-18.1 or 36-7-9-19 shall be deposited into this fund.
(I.C. 36-7-9-14; 36-7-9-18.1, 36-7-9-19; Ord 2022-11, passed 7-5-2022)

§ 150.55 STANDARDS FOR BUILDING CONDITION OR MAINTENANCE

All work for reconstruction, alteration, repair or demolition shall be performed in a good workmanlike manner according to the accepted standards and practices in the trade. The provisions of the local ordinance or the Fire Safety, Building and Equipment Laws defined in I.C. 22-12 *et seq.* shall be considered standard and acceptable practice for all matters covered by this chapter or orders issued pursuant to the Enforcement Authority or Hearing Authority.

(I.C. 36-7-9-5; 22-12; Ord 2022-11, passed 7-5-2022)

§ 150.56 INSPECTION WARRANTS.

If the owners or those in possession of a building refuse inspection, and inspection officer of the enforcement authority may obtain a warrant pursuant to the provisions of I.C. 36-7-9-16.

(I.C. 36-7-9-16; Prior Code, Ch. 14, Art. V; (Am. Ord 2022-11, passed 7-5-2022)

§ 150.57 ABANDONED STRUCTURES

The Town may seek to have a receiver appointed, take possession, rehabilitate and transfer any unsafe building or unsafe premises pursuant to the provisions of IC 36-7-9-20.5 over a structure that is deemed abandoned under the provisions of I.C. 36-7-37 *et seq.*

(I.C. 36-7-9-20.5, Ord 2022-11, 7-5-2022)

§ 150.99 PENALTY.

(A) Any person violating any provision of this chapter for which no penalty is prescribed shall be subject to §10.99.

(B) If the Enforcement Authority determines that an order issued by it under the provisions §150.47, that violation did not require a hearing or the persons violating did not request a hearing, that did not require a hearing, and the person has failed or refused to comply with the order within the time frame specified, the enforcement authority may impose a civil penalty not to exceed two thousand five hundred dollars (\$2,500). The enforcement authority shall give notice of the civil penalty to all persons with a known or recorded substantial property interest in the unsafe premises. If after a civil penalty is imposed under this section enforcement authority may impose an additional civil penalty in an amount not to exceed one thousand dollars (\$1,000) every ninety (90) days if the person to whom the order was issued continues to fail or refuse to comply with the order. If the penalty under this section remains unpaid for more than fifteen (15) days after payment of the civil penalty is due, the civil penalty may be collected from any person against whom the hearing officer assessed the civil penalty or fine. The amount of the civil penalty or fine that is collected shall be deposited in the unsafe building fund.

(C) If the Hearing Authority finds that there is a willful failure to comply with the order issued under §150.50, then they may impose a civil penalty in an amount not to exceed five thousand dollars (\$5,000). If the penalty under this section remains unpaid for more than fifteen (15) days after payment of the civil penalty is due, the civil penalty may be collected from any person against whom the hearing officer assessed the civil penalty or fine. The amount of the civil penalty or fine that is collected shall be deposited in the unsafe building fund.

(D) In addition to the penalties provided for herein, any costs borne by the Town may be recorded as a judgment lien upon the real estate and placed on the tax rolls as a special assessment pursuant to the provisions of IC 36-7-9-13 and 36-7-9-13.5.

(E) The Town may initiate a civil action in a court of competent jurisdiction to restrain any person from violating a provision of this Ordinance. Any such action for mandatory or injunctive relief may be joined with an action to recover the penalties provided for in this code, plus the cost of filing and reasonable attorney fees. The assessment of a monetary penalty shall in no way limit the operation of the penalties provided elsewhere in this building ordinance.

(I.C. 36-9-7.5, 36-7-9-9, 36-7-9-12, 36-7-9-13, 36-7-9-13.5, 36-7-9-17, 36-7-18, 36-7-9-19; Prior Code, Ch. 14, Art. XIII) (Am. Ord. 2009-13, passed 6-1-2009; (Am. Ord 2022-11, passed 7-5-2022)

CHAPTER 151: FLOOD DAMAGE PREVENTION

Section

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§ 151.01 STATUTORY AUTHORIZATION AND FINDINGS OF FACT.

(A) The Indiana Legislature has in IC 36-7-4 granted the power to local government units to control land use within their jurisdictions. Therefore, the Town Board of the Town of Spencer does hereby adopt the following floodplain management regulations.

(B) The flood hazard areas of the Town of Spencer are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(C) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, inadequately flood-proofed, or otherwise unprotected from flood damages.

(Prior Code, Ch 9, Art. VII, §2) (Ord. 1987-2, passed 2-2-1987, Am. Ord. 1992-4, passed 6-15-1992, Am. Ord. 2014-01, passed 2-3-2014)

§ 151.02 STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights or velocities.
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters.
- (4) Control filling, grading, dredging, and other development which may increase erosion or flood damage.

- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.
- (6) Make federally subsidized flood insurance available for structures and their contents in the Town by fulfilling the requirements of the National Flood Insurance Program.

(B) The objectives of this ordinance are:

- (1) To protect human life and health.
- (2) To minimize expenditure of public money for costly flood control projects.
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- (4) To minimize prolonged business interruptions.
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in floodplains.
- (6) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas.

(Prior Code, Ch. 9 , Art. VII, §2) (Ord. 1987-2, passed 2-2-1987, Am. Ord. 1992-4, passed 6-5-1992, Am. Ord. 2014-01, passed 2-3-2014)

§ 151.03 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

A zone means portions of the SFHA in which the principal source of flooding is runoff from rainfall, snowmelt, or a combination of both. In A zones, floodwaters may move slowly or rapidly, but waves are usually not a significant threat to buildings. These areas are labeled as Zone A, Zone AE, Zones A1-A30, Zone AO, Zone AH, Zone AR and Zone A99 on a FIRM. The definitions are presented below:

Zone A: Areas subject to inundation by the one-percent annual chance flood event. Because detailed hydraulic analyses have not been performed, no base flood elevation or depths are shown.

Zone AE and A1-A30: Areas subject to inundation by the one-percent annual chance flood event determined by detailed methods. Base flood elevations are shown within these zones. (Zone AE is on new and revised maps in place of Zones A1-A30.)

Zone AO: Areas subject to inundation by one-percent annual chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone.

Zone AH: Areas subject to inundation by one-percent annual chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone.

Zone AR: Areas that result from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide base flood protection.

Zone A99: Areas subject to inundation by the one-percent annual chance flood event, but which will ultimately be protected upon completion of an under-construction Federal flood protection system. These are areas of special flood hazard where enough progress has been made on the construction of a protection system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. Zone A99 may only be used when the flood protection system has reached specified statutory progress toward completion. No base flood elevations or depths are shown.

Accessory structure (appurtenant structure) means a structure with a floor area 400 square feet or less that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal initial investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds

Addition (to an existing structure) means any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

Appeal means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance.

Area of shallow flooding means a designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Base Flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE) means the elevation of the one-percent annual chance flood.

Basement means that portion of a structure having its floor sub-grade (below ground level) on all sides.

Boundary River means the part of the Owen River that forms the boundary between the Kentucky and Indiana.

Boundary River Floodway means the floodway of a boundary river.

Building - see "Structure."

Community means a political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

Community Rating System (CRS) means a program developed by the Federal Insurance Administration to provide incentives for those communities in the Regular Program that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.

Critical facility means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire, and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

Development means any man-made change to improved or unimproved real estate including but not limited to:

- (1) construction, reconstruction, or placement of a structure or any addition to a structure;
- (2) installing a manufactured home on a site, preparing a site for a manufactured home or installing a recreational vehicle on a site for more than 180 days;
- (3) installing utilities, erection of walls and fences, construction of roads, or similar projects;
- (4) construction of flood control structures such as levees, dikes, dams, channel improvements, etc.;
- (5) mining, dredging, filling, grading, excavation, or drilling operations;
- (6) construction and/or reconstruction of bridges or culverts;
- (7) storage of materials; or
- (8) any other activity that might change the direction, height, or velocity of flood or surface waters.

"Development" does not include activities such as the maintenance of existing structures and facilities such as painting, re-roofing; resurfacing roads; or gardening, plowing, and similar agricultural practices that do not involve filling, grading, excavation, or the construction of permanent structures.

Elevated structure means a non-basement structure built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, filled stem wall foundations (also called chain walls), pilings, or columns (posts and piers).

Elevation Certificate is a certified statement that verifies a structure's elevation information.

Emergency Program means the first phase under which a community participates in the NFIP. It is intended to provide a first layer amount of insurance at subsidized rates on all insurable structures in that community before the effective date of the initial FIRM.

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the community's first floodplain ordinance.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FEMA means the Federal Emergency Management Agency.

Flood means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow, the unusual and rapid accumulation, or the runoff of surface waters from any source.

Flood Boundary and Floodway Map (FBFM) means an official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and regulatory floodway.

Flood Insurance Rate Map (FIRM) means an official map of a community, on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) is the official hydraulic and hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM, FBFM (where applicable), and the water surface elevation of the base flood.

Flood Prone Area means any land area acknowledged by a community as being susceptible to inundation by water from any source. (See “Flood”)

Flood Protection Grade (FPG) is the elevation of the regulatory flood plus two feet at any given location in the SFHA. (see “Freeboard”)

Floodplain means the channel proper and the areas adjoining any wetland, lake, or watercourse which have been or hereafter may be covered by the regulatory flood. The floodplain includes both the floodway and the fringe districts.

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain management regulations means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage. Floodplain management regulations are also referred to as floodplain regulations, floodplain ordinance, flood damage prevention ordinance, and floodplain management requirements.

Floodproofing (dry floodproofing) is a method of protecting a structure that ensures that the structure, together with attendant utilities and sanitary facilities, is watertight to the floodproofed design elevation with walls that are substantially impermeable to the passage of water. All structural components of these walls are capable of resisting hydrostatic and hydrodynamic flood forces, including the effects of buoyancy, and anticipated debris impact forces.

Floodproofing certificate is a form used to certify compliance for non-residential structures as an alternative to elevating structures to or above the FPG. This certification must be by a Registered Professional Engineer or Architect.

Floodway is the channel of a river or stream and those portions of the floodplains adjoining the channel which are reasonably required to efficiently carry and discharge the peak flood flow of the regulatory flood of any river or stream.

Freeboard means a factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood.

Fringe is those portions of the floodplain lying outside the floodway.

Hardship (as related to variances of this ordinance) means the exceptional hardship that would result from a failure to grant the requested variance. The Board of Zoning Appeals requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is NOT exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

Historic structures means any structures individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.

Increased Cost of Compliance (ICC) means the cost to repair a substantially damaged structure that exceeds the minimal repair cost and that is required to bring a substantially damaged structure into compliance with the local flood damage prevention ordinance. Acceptable mitigation measures are elevation, relocation, demolition, or any combination thereof. All renewal and new business flood insurance policies with effective dates on or after June 1, 1997, will include ICC coverage.

Letter of Final Determination (LFD) means a letter issued by FEMA during the mapping update process which establishes final elevations and provides the new flood map and flood study to the community. The LFD initiates the six-month adoption period. The community must adopt or amend its floodplain management regulations during this six-month period unless the community has previously incorporated an automatic adoption clause.

Letter of Map Change (LOMC) is a general term used to refer to the several types of revisions and amendments to FEMA maps that can be accomplished by letter. They include Letter of Map

Amendment (LOMA), Letter of Map Revision (LOMR), and Letter of Map Revision based on Fill (LOMR-F). The definitions are presented below:

Letter of Map Amendment (LOMA) means an amendment by letter to the currently effective FEMA map that establishes that a property is not located in a SFHA through the submittal of property specific elevation data. A LOMA is only issued by FEMA.

Letter of Map Revision (LOMR) means an official revision to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.

Letter of Map Revision Based on Fill (LOMR-F) means an official revision by letter to an effective NFIP map. A LOMR-F provides FEMA's determination concerning whether a structure or parcel has been elevated on fill above the BFE and excluded from the SFHA.

Lowest adjacent grade means the lowest elevation, after completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

Lowest floor means the lowest elevation described among the following:

- (1) The top of the lowest level of the structure.
- (2) The top of the basement floor.
- (3) The top of the garage floor, if the garage is the lowest level of the structure.
- (4) The top of the first floor of a structure elevated on pilings or pillars.
- (5) The top of the floor level of any enclosure, other than a basement, below an elevated structure where the walls of the enclosure provide any resistance to the flow of flood waters unless:
 - a) the walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters by providing a minimum of two openings (in addition to doorways and windows) in a minimum of two exterior walls; if a structure has more than one enclosed area, each shall have openings on exterior walls;
 - b) the total net area of all openings shall be at least one (1) square inch for every one square foot of enclosed area; the bottom of all such openings shall be no higher than one (1) foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher; and,
 - c) such enclosed space shall be usable solely for the parking of vehicles and building access.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value means the building value, excluding the land (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal, replacement cost depreciated by age of building (actual cash value), or adjusted assessed values.

Mitigation means sustained actions taken to reduce or eliminate long-term risk to people and property from hazards and their effects. The purpose of mitigation is twofold: to protect people and structures, and to minimize the cost of disaster response and recovery.

National Flood Insurance Program (NFIP) is the federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the Federal Government and the private insurance industry.

National Geodetic Vertical Datum (NGVD) of 1929 as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

New construction means any structure for which the “start of construction” commenced after the effective date of the community’s first floodplain ordinance.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the community’s first floodplain ordinance.

Non-boundary river floodway means the floodway of any river or stream other than a boundary river.

North American Vertical Datum of 1988 (NAVD 88) as adopted in 1993 is a vertical control datum used as a reference for establishing varying elevations within the floodplain.

Obstruction includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, canalization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water; or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

One-percent annual chance flood is the flood that has a one percent (1%) chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the one-percent annual chance flood. See “Regulatory Flood”.

Physical Map Revision (PMR) is an official republication of a community’s FEMA map to effect changes to base (1-percent annual chance) flood elevations, floodplain boundary delineations, regulatory floodways, and planimetric features. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or correction to base flood elevations or SFHAs.

Public safety and nuisance means anything which is injurious to the safety or health of an entire community, neighborhood or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Recreational vehicle means a vehicle which is (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling, but as quarters for recreational camping, travel, or seasonal use.

Regular program means the phase of the community’s participation in the NFIP where more comprehensive floodplain management requirements are imposed and higher amounts of insurance are available based upon risk zones and elevations determined in a FIS.

Regulatory flood means the flood having a one percent (1%) chance of being equaled or exceeded in any given year, as calculated by a method and procedure that is acceptable to and approved by the Indiana Department of Natural Resources and the Federal Emergency Management Agency. The regulatory flood elevation at any location is as defined in Article 3 (B) of this ordinance. The "Regulatory Flood" is also known by the term "Base Flood", “One-Percent Annual Chance Flood”, and “100-Year Flood”.

Repetitive loss means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equaled or exceeds 25% of the market value of the structure before the damage occurred.

Section 1316 is that section of the National Flood Insurance Act of 1968, as amended, which states that no new flood insurance coverage shall be provided for any property that the Administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

Special Flood Hazard Area (SFHA) means those lands within the jurisdiction of the Town subject to inundation by the regulatory flood. The SFHAs of the Town of Spencer are generally identified as such on the Owen County, Indiana and Incorporated Areas Flood Insurance Rate Map dated March 3, 2014 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date. (These areas are shown on a FIRM as Zone A, AE, A1-A30, AH, AR, A99, or AO).

Start of construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a structure that is principally above ground and is enclosed by walls and a roof. The term includes a gas or liquid storage tank, a manufactured home, or a prefabricated building. The term also includes recreational vehicles to be installed on a site for more than 180 days.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "repetitive loss" or "substantial damage" regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary, or safety code requirements or any alteration of a "historic structure", provided that the alteration will not preclude the structures continued designation as a "historic structure".

Suspension means the removal of a participating community from the NFIP because the community has not enacted and/or enforced the proper floodplain management regulations required for participation in the NFIP.

Variance is a grant of relief from the requirements of this ordinance, which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.

Violation means the failure of a structure or other development to be fully compliant with this ordinance. A structure or other development without the elevation, other certification, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

Watercourse means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

X zone means the area where the flood hazard is less than that in the SFHA. Shaded X zones shown on recent FIRMs (B zones on older FIRMs) designate areas subject to inundation by the flood with a 0.2 percent chance of being equaled or exceeded (the 500-year flood). Unshaded X zones (C zones on older FIRMs) designate areas where the annual exceedance probability of flooding is less than 0.2 percent.

Zone means a geographical area shown on a FIRM that reflects the severity or type of flooding in the area.

Zone A (see definition for A zone)

Zone B, C, and X means areas identified in the community as areas of moderate or minimal hazard from the principal source of flood in the area. However, buildings in these zones could be flooded by severe, concentrated rainfall coupled with inadequate local drainage systems. Flood insurance is available in participating communities but is not required by regulation in these zones. (Zone X is used on new and revised maps in place of Zones B and C.)

(Prior Code, Ch. 9, Art. VII, §3) (Ord. 1987-2, passed 2-2-1987, Am. Ord. 1992-4, passed 6-5-1992, Am. Ord. 2001-2, passed 11-5-2011, Am. Ord. 2014-01, passed 2-3-2014)

§ 151.04 LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all SFHAs and known flood prone areas within the jurisdiction of the Town of Spencer.

(Ord. 2014-1, passed 2-3-2014)

§ 151.05 BASIS FOR ESTABLISHING REGULATORY FLOOD DATA

This ordinance's protection standard is the regulatory flood. The best available regulatory flood data is listed below.

- (1) The regulatory flood elevation, floodway, and fringe limits for the studied SFHAs within the jurisdiction of the Town of Spencer shall be as delineated on the one-percent annual chance flood profiles in the Flood Insurance Study of Owen County, Indiana and Incorporated Areas and the corresponding Flood Insurance Rate Map dated March 3, 2014 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date.
- (2) The regulatory flood elevation, floodway, and fringe limits for each of the SFHAs within the jurisdiction of the Town of Spencer, delineated as an "A Zone" on the Owen County, Indiana and Incorporated Areas Flood Insurance Rate Map dated March 3, 2014 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date, shall be according to the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile. Whenever a party disagrees with the best available data, the party needs to replace existing data with better data that meets current engineering standards. To be considered, this data must be submitted to the Indiana Department of Natural Resources for review, subsequently approved.
- (3) In the absence of a published FEMA map, or absence of identification on a FEMA map, the regulatory flood elevation, floodway, and fringe limits of any watercourse in the community's known flood prone areas shall be according to the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile.

(4) Upon issuance of a Letter of Final Determination (LFD), any more restrictive data in the new (not yet effective) mapping/study shall be utilized for permitting and construction (development) purposes, replacing all previously effective less restrictive flood hazard data provided by FEMA. (Prior Code, Ch. 9, Art. VII, §5) (Ord. 1987-2, passed 2-2-1987, Am. Ord. 1992-4, passed 6-5-1992, Am. Ord. 2014-01, passed 2-3-2014)

§ 151.06 ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities in areas of special flood hazard.

(Prior Code, Ch. 9, Art. VII, §6) (Ord. 1987-2, passed 2-2-1987, Am. Ord. 1992-4, passed 6-5-1992, Am. Ord. 2001-2, passed 11-5-2001, Am. Ord. 2014-01, passed 2-3-2014)

§ 151.07 DESIGNATION OF ADMINISTRATOR

The Town Board of the Town of Spencer hereby appoints the Building Inspector to administer and implement the provisions of this ordinance and is herein referred to as the Floodplain Administrator.

(Prior Code, Ch. 9, Art. VII, §4) (Ord. 1987-2, passed 2-2-1987, Am. Ord. 1992-4, passed 6-5-1992, Am. Ord. 2014-01, passed 2-3-2014)

§ 151.08 PERMIT PROCEDURES

Application for a Floodplain Development Permit shall be made to the Floodplain Administrator on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically the following information is required:

- (1) Application Stage.
 - (a) A description of the proposed development.
 - (b) Location of the proposed development sufficient to accurately locate property and structure(s) in relation to existing roads and streams.
 - (c) A legal description of the property site.

- (d) A site development plan showing existing and proposed development locations and existing and proposed land grades.
- (e) Elevation of the top of the planned lowest floor (including basement) of all proposed buildings. Elevation should be in NAVD 88 or NGVD.
- (f) Elevation (in NAVD 88 or NGVD) to which any non-residential structure will be floodproofed.
- (g) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. A hydrologic and hydraulic engineering study is required and any watercourse changes submitted to DNR for approval and then to FEMA as a Letter of Map Revision. (See Article 4, Section C. (6) for additional information.)

(2) Construction Stage.

Upon establishment/placement of the lowest floor, before framing continues, to include any approved floodproofing, it shall be the duty of the applicant to submit to the Floodplain Administrator a certification of the NAVD 88 or NGVD elevation of the lowest floor or floodproofed elevation, as built. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by the same. When floodproofing is utilized for a particular structure said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to submission of the floodproofing certification shall be at the applicant's risk. (The Floodplain Administrator shall review the lowest floor and floodproofing elevation survey data submitted.) The applicant shall correct deficiencies detected by such review before any further work is allowed to proceed. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.

Any work undertaken prior to submission of the elevation certification shall be at the applicant's risk. The Floodplain Administrator shall review the lowest floor or floodproofed elevation survey data submitted. The applicant shall correct any deficiencies detected by such review. Failure to submit the elevation certification or failure to make correction required shall be cause to issue a stop-work order for the project.

(3) Finished Construction.

Upon completion of construction, a FEMA elevation certificate, Form 81-31, which depicts all finished construction, is required to be submitted to the Floodplain Administrator. If the project

includes a floodproofing measure, a FEMA floodproofing certificate, Form 81-65, is required to be submitted by the applicant to the Floodplain Administrator.

(Ord. 2014-1, passed 2-3-2014)

§ 151.09 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

The Floodplain Administrator and/or designated staff is hereby authorized and directed to enforce the provisions of this ordinance. The administrator is further authorized to render interpretations of this ordinance, which are consistent with its spirit and purpose.

Duties and Responsibilities of the Floodplain Administrator shall include, but are not limited to:

- (1) Review all floodplain development permits to assure that the permit requirements of this ordinance have been satisfied.
- (2) Inspect and inventory damaged structures in the SFHA and complete substantial damage determinations.
- (3) Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all development projects subject to Article 5, Section E and G (1) of this ordinance, and maintain a record of such authorization (either copy of actual permit/authorization or floodplain analysis/regulatory assessment).
- (4) Ensure that all necessary federal or state permits have been received prior to issuance of the local floodplain development permit. Copies of such permits/authorizations are to be maintained on file with the floodplain development permit.
- (5) Maintain and track permit records involving additions and improvements to residences located in the floodway.
- (6) Notify adjacent communities and the State Floodplain Coordinator prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.
- (7) Maintain for public inspection and furnish upon request local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data, SFHA maps, Letters of Map Change (LOMC), copies of DNR permits, letters of authorization, and floodplain analysis and regulatory assessments (letters of recommendation), federal permit documents, and “as-built” elevation and floodproofing data for all buildings constructed subject to this ordinance.
- (8) Utilize and enforce all Letters of Map Change (LOMC) or Physical Map Revisions (PMR) issued by FEMA for the currently effective SFHA maps of the community.

- (9) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (10) Review certified plans and specifications for compliance.
- (11) Verify and record the actual elevation of the lowest floor (including basement) of all new or substantially improved structures, in accordance with Article 4 Section B.
- (12) Verify and record the actual elevation to which any new or substantially improved structures have been floodproofed in accordance with Article 4, Section B.
- (13) Stop Work Orders
 - a) Upon notice from the floodplain administrator, work on any building, structure or premises that is being done contrary to the provisions of this ordinance shall immediately cease.
 - b) Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed.
- (14) Revocation of Permits
 - a) The floodplain administrator may revoke a permit or approval, issued under the provisions of the ordinance, in cases where there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.
 - b) The floodplain administrator may revoke a permit upon determination by the floodplain administrator that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this ordinance.

(Prior Code, Ch. 9, Art. VII, §4) (Ord. 1987-2, passed 2-2-1987, Am. Ord. 1992-4, passed 6-5-1992, Am. Ord. 2014-01, passed 2-3-2014)

§ 151.10 PROVISIONS FOR FLOOD HAZARD REDUCTION-GENERAL STANDARDS

In all SFHAs and known flood prone areas the following provisions are required:

- (1) New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.

- (3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage below the FPG.
- (4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage.
- (5) Electrical, heating, ventilation, plumbing, air conditioning equipment, utility meters, and other service facilities shall be located at/above the FPG or designed so as to prevent water from entering or accumulating within the components below the FPG. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG.
- (6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (9) Any alteration, repair, reconstruction or improvements to a structure that is in compliance with the provisions of this ordinance shall meet the requirements of “new construction” as contained in this ordinance.

(Ord. 2014-1, passed 2-3-2014)

§ 151.11 PROVISIONS FOR FLOOD HAZARD REDUCTION-SPECIFIC STANDARDS

In all SFHAs, the following provisions are required:

- (1) In addition to the requirements of Article 5, Section A, all structures to be located in the SFHA shall be protected from flood damage below the FPG. This building protection requirement applies to the following situations:
 - a) Construction or placement of any structure having a floor area greater than 400 square feet.
 - b) Addition or improvement made to any existing structure where the cost of the addition or improvement equals or exceeds 50% of the value of the existing structure (excluding the value of the land).

- c) Reconstruction or repairs made to a damaged structure where the costs of restoring the structure to it's before damaged condition equals or exceeds 50% of the market value of the structure (excluding the value of the land) before damage occurred.
 - d) Installing a travel trailer or recreational vehicle on a site for more than 180 days.
 - e) Installing a manufactured home on a new site or a new manufactured home on an existing site. This ordinance does not apply to returning the existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damage.
 - f) Reconstruction or repairs made to a repetitive loss structure.
 - g) Addition or improvement made to any existing structure with a previous addition or improvement constructed since the community's first floodplain ordinance.
- (2) **Residential Structures.** New construction or substantial improvement of any residential structure (or manufactured home) shall have the lowest floor; including basement, at or above the FPG (two feet above the base flood elevation). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Article 5, Section B (4).
- (3) **Non-Residential Structures.** New construction or substantial improvement of any commercial, industrial, or non-residential structure (or manufactured home) shall either have the lowest floor, including basement, elevated to or above the FPG (two feet above the base flood elevation) or be floodproofed to or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Article 5, Section B (4). Structures located in all "A Zones" may be floodproofed in lieu of being elevated if done in accordance with the following:
- a) A Registered Professional Engineer or Architect shall certify that the structure has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The structure design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice. Such certification shall be provided to the official as set forth in Article 4, Section C (12).
 - b) Floodproofing measures shall be operable without human intervention and without an outside source of electricity.

- (4) **Elevated Structures.** New construction or substantial improvements of elevated structures shall have the lowest floor at or above the FPG.

Elevated structures with fully enclosed areas formed by foundation and other exterior walls below the flood protection grade shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls. Designs must meet the following minimum criteria:

- a) Provide a minimum of two openings located in a minimum of two exterior walls (having a total net area of not less than one square inch for every one square foot of enclosed area).
- b) The bottom of all openings shall be no more than one foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher.
- c) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
- d) Access to the enclosed area shall be the minimum necessary to allow for parking for vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).
- e) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.
- f) The interior grade of such enclosed area shall be at an elevation at or higher than the exterior grade.

- (5) **Structures Constructed on Fill.** A residential or nonresidential structure may be constructed on a permanent land fill in accordance with the following:

- a) The fill shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with either the Standard or Modified Proctor Test method, which shall be retained in permit file.
- b) The fill shall extend 10 feet beyond the foundation of the structure before sloping below the BFE.
- c) The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulkheading. If vegetative cover is used, the slopes shall be no steeper than 3 horizontal to 1 vertical.
- d) The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.

e) The top of the lowest floor including basements shall be at or above the FPG.

(6) **Standards for Manufactured Homes and Recreational Vehicles.** Manufactured homes and recreational vehicles to be installed or substantially improved on a site for more than 180 days must meet one of the following requirements:

a) These requirements apply to all manufactured homes to be placed on a site outside a manufactured home park or subdivision; in a new manufactured home park or subdivision; in an expansion to an existing manufactured home park or subdivision; or in an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as a result of a flood:

(i) The manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the FPG and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(ii) Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Article 5, Section B. 4.

(iii) Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.

b) These requirements apply to all manufactured homes to be placed on a site in an existing manufactured home park or subdivision that has not been substantially damaged by a flood:

(i) The manufactured home shall be elevated so that the lowest floor of the manufactured home chassis is supported by reinforced piers or other foundation elevations that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(ii) Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Article 5, Section B. 4.

(iii) Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.

c) Recreational vehicles placed on a site shall either:

- (i) be on site for less than 180 days; or,
- (ii) be fully licensed and ready for highway use (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
- (iii) meet the requirements for “manufactured homes” as stated earlier in this section.

(7) **Accessory Structures.** Relief to the elevation or dry floodproofing standards may be granted for accessory structures. Such structures must meet the following standards:

- a) Shall not be used for human habitation.
- b) Shall be constructed of flood resistant materials.
- c) Shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters.
- d) Shall be firmly anchored to prevent flotation.
- e) Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the FPG.
- f) Shall be designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Article 5, Section B. 4.

(8) **Above Ground Gas or Liquid Storage Tanks.** All above ground gas or liquid storage tanks shall be anchored to prevent flotation or lateral movement.

(Ord. 2014-1, passed 2-3-2014)

§ 151.12 PROVISIONS FOR FLOOD HAZARD REDUCTION-STANDARDS FOR SUBDIVISION PROPOSALS

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions), which is greater than the lesser of fifty (50) lots or five (5) acres.

(5) All subdivision proposals shall minimize development in the SFHA and/or limit density of development permitted in the SFHA.

(6) All subdivision proposals shall ensure safe access into/out of SFHA for pedestrians and vehicles (especially emergency responders).

(Ord. 2014-1, passed 2-3-2014)

§ 151.13 PROVISIONS FOR FLOOD HAZARD REDUCTION-CRITICAL FACILITY

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA. Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated to or above the FPG at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the FPG shall be provided to all critical facilities to the extent possible.

(Ord. 2014-1, passed 2-3-2014)

§ 151.14 PROVISIONS FOR FLOOD HAZARD REDUCTION-STANDARDS FOR IDENTIFIED FLOODWAYS.

Located within SFHAs, established in Article 3, Section B, are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and has erosion potential. If the site is in an identified floodway, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources and apply for a permit for construction in a floodway. Under the provisions of IC 14-28-1 a permit for construction in a floodway from the Indiana Department of Natural Resources is required prior to the issuance of a local building permit for any excavation, deposit, construction, or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing and paving etc. undertaken before the actual start of construction of the structure. However, it does exclude non-substantial additions/improvements to existing (lawful) residences in a non-boundary river floodway. (IC 14-28-1-26 allows construction of a non-substantial addition/ improvement to a residence in a non-boundary river floodway without obtaining a permit for construction in the floodway from the Indiana Department of Natural Resources. Please note that if fill is needed to elevate an addition above the existing grade, prior approval for the fill is required from the Indiana Department of Natural Resources.)

No action shall be taken by the Floodplain Administrator until a permit or letter of authorization (when applicable) has been issued by the Indiana Department of Natural Resources granting approval for construction in the floodway. Once a permit for construction in a floodway or letter of authorization has been issued by the Indiana Department of Natural Resources, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in Article 5 of this ordinance have been met. The Floodplain Development Permit cannot be less restrictive than the permit for construction in a floodway issued by the Indiana Department of Natural Resources. However, a community's more restrictive regulations (if any) shall take precedence.

No development shall be allowed, which acting alone or in combination with existing or future development, that will adversely affect the efficiency of, or unduly restrict the capacity of the floodway. This adverse affect is defined as an increase in the elevation of the regulatory flood of at least fifteen-hundredths (0.15) of a foot as determined by comparing the regulatory flood elevation under the project condition to that under the natural or pre-floodway condition as proven with hydraulic analyses.

For all projects involving channel modifications or fill (including levees) the Town shall submit the data and request that the Federal Emergency Management Agency revise the regulatory flood data per mapping standard regulations found at 44 CFR § 65.12.

(Ord. 2014-1, passed 2-3-2014)

§ 151.15 PROVISIONS FOR FLOOD HAZARD REDUCTION-STANDARDS FOR IDENTIFIED FRINGE

If the site is located in an identified fringe, then the Floodplain Administrator may issue the local Floodplain Development Permit provided the provisions contained in Article 5 of this ordinance have been met. The key provision is that the top of the lowest floor of any new or substantially improved structure shall be at or above the FPG.

(Ord. 2014-1, passed 2-3-2014)

§ 151.16 PROVISIONS FOR FLOOD HAZARD REDUCTION- STANDARDS FOR SFHAs WITHOUT ESTABLISHED BASE FLOOD ELEVATION AND/OR FLOODWAYS/FRINGES.

- (1) Drainage area upstream of the site is greater than one square mile:

If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined, and the drainage area upstream of the site is greater than one square mile, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment.

No action shall be taken by the Floodplain Administrator until either a permit for construction in a floodway permit (including letters of authorization) or a floodplain analysis/regulatory assessment citing the one-percent annual chance flood elevation and the recommended Flood Protection Grade has been received from the Indiana Department of Natural Resources.

Once the Floodplain Administrator has received the proper permit for construction in a floodway permit (including letters of authorization) or floodplain analysis/regulatory assessment approving the proposed development, a Floodplain Development Permit may be issued provided the conditions of the Floodplain Development Permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in Article 5 of this ordinance have been met.

- (2) Drainage area upstream of the site is less than one square mile:

If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined and the drainage area upstream of the site is less than one square mile, the Floodplain Administrator shall require the applicant to provide an engineering analysis showing the limits of the floodplain and one-percent annual chance flood elevation for the site.

Upon receipt, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in Article 5 of this ordinance have been met.

- (3) The total cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the regulatory flood more than 0.14 of one foot and will not increase flood damages or potential flood damages.

(Ord. 2014-1, passed 2-3-2014)

§ 151.17 PROVISIONS FOR FLOOD HAZARD REDUCTION-STANDARDS FOR FLOOD PRONE AREAS

All development in known flood prone areas not identified on FEMA maps, or where no FEMA published map is available, shall meet applicable standards as required per Article 5.

(Ord. 2014-1, passed 2-3-2014)

§ 151.18 DESIGNATION OF VARIANCE AND APPEALS BOARD

The Board of Zoning Appeals shall hear and decide appeals and requests for variances from requirements of this ordinance.

(Ord. 2014-1, passed 2-3-2014)

§ 151.19 DUTIES OF VARIANCE AND APPEALS BOARD

The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the board may appeal such decision to the Owen County Circuit Court.

(Ord. 2014-1, passed 2-3-2014)

§ 151.20 VARIANCE PROCEDURES

In passing upon such applications, the board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and;

- (1) The danger of life and property due to flooding or erosion damage.
- (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- (3) The importance of the services provided by the proposed facility to the community.
- (4) The necessity to the facility of a waterfront location, where applicable.
- (5) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
- (6) The compatibility of the proposed use with existing and anticipated development,

- (7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
- (8) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (9) The expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site.
- (10) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(Prior Code, Ch.9, Art. VII, §10) (Ord. 1987-2, passed 2-2-1987; Am. Ord. 1992-4, passed 6-15-1992; Am. Ord. 2014-1, passed 2-3-2014)

§ 151.21 CONDITIONS FOR VARIANCES

- (1) Variances shall only be issued when there is:
 - a) A showing of good and sufficient cause.
 - b) A determination that failure to grant the variance would result in exceptional hardship.
 - c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
- (2) No variance for a residential use within a floodway subject to Article 5, Section E or Section G (1) of this ordinance may be granted.
- (3) Any variance granted in a floodway subject to Article 5, Section E or Section G (1) of this ordinance will require a permit from the Indiana Department of Natural Resources.
- (4) Variances to the Provisions for Flood Hazard Reduction of Article 5, Section B, may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.
- (5) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (6) Variances may be granted for the reconstruction or restoration of any structure individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.

- (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Flood Protection Grade and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation (See Article 6, Section E).
- (8) The Floodplain Administrator shall maintain the records of appeal actions and report any variances to the Federal Emergency Management Agency or the Indiana Department of Natural Resources upon request (See Article 6, Section E).

(Ord. 2014-1, passed 2-3-2014)

§ 151.22 VARIANCE NOTIFICATION

Any applicant to whom a variance is granted that allows the lowest floor of a structure to be built below the flood protection grade shall be given written notice over the signature of a community official that:

- (1) The issuance of a variance to construct a structure below the flood protection grade will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and;
- (2) Such construction below the flood protection grade increases risks to life and property. A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

The Floodplain Administrator will maintain a record of all variance actions, including justification for their issuance.

(Ord. 2014-1, passed 2-3-2014)

§ 151.23 HISTORIC STRUCTURE

Variances may be issued for the repair or rehabilitation of “historic structures” upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as an “historic structure” and the variance is the minimum to preserve the historic character and design of the structure.

(Ord. 2014-1, passed 2-3-2014)

§ 151.24 SPECIAL CONDITIONS

Upon the consideration of the factors listed in Article 6, and the purposes of this ordinance, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

(Ord. 2014-1, passed 2-3-2014)

§ 151.25 COMPLIANCE

No structure shall hereafter be located, extended, converted or structurally altered within the SFHA without full compliance with the terms of this ordinance and other applicable regulations. No land or stream within the SFHA shall hereafter be altered without full compliance with the terms of this ordinance and other applicable regulations.

(Ord. 2014-1, passed 2-3-2014)

§ 151.26 ABROGATION AND GREATER RESTRICTIONS

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Prior Code, Ch.9, Art. VII, §12) (Ord. 1987-2, passed 2-2-1987; Am. Ord. 1992-4, passed 6-15-1992; Am. Ord. 2014-1, passed 2-3-2014)

§ 151.27 DISCREPANCY BETWEEN MAPPED FLOODPLAIN AND ACTUAL GROUND ELEVATIONS

- (1) In cases where there is a discrepancy between the mapped floodplain (SFHA) on the FIRM and the actual ground elevations, the elevation provided on the profiles shall govern.
- (2) If the elevation of the site in question is below the base flood elevation, that site shall be included in the SFHA and regulated accordingly.
- (3) If the elevation (natural grade) of the site in question is above the base flood elevation and not located within the floodway, that site shall be considered outside the SFHA and the floodplain regulations will not be applied. The property owner shall be advised to apply for a LOMA.

(Ord. 2014-1, passed 2-3-2014)

§ 151.28 INTERPRETATION

In the interpretation and application of this ordinance all provisions shall be:

- (1) Considered as minimum requirements.
- (2) Liberally construed in favor of the governing body.
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. 2014-1, passed 2-3-2014)

§ 151.29 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this ordinance does not create any liability on the part of the Town of Spencer, the Indiana Department of Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this ordinance or any administrative decision made lawfully thereunder.

(Prior Code, Ch.9, Art. VII, §11) (Ord. 1987-2, passed 2-2-1987; Am. Ord. 1992-4, passed 6-15-1992; Am. Ord. 2014-1, passed 2-3-2014)

§ 151.99 PENALTIES FOR VIOLATION

Failure to obtain a Floodplain Development Permit in the SFHA or failure to comply with the requirements of a Floodplain Development Permit or conditions of a variance shall be deemed to be a violation of this ordinance. All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of the Zoning Code for the Town of Spencer. All violations shall be punishable by a fine not exceeding \$1000.00.

- (1) A separate offense shall be deemed to occur for each day the violation continues to exist.
- (2) The Floodplain Administrator shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.
- (3) Nothing herein shall prevent the Town from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible.

(Prior Code, Ch.9, Art. VII, §12) (Ord. 1987-2, passed 2-2-1987; Am. Ord. 1992-4, passed 6-15-1992; Am. Ord. 2014-1, passed 2-3-2014)

CHAPTER 152: ZONING

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GENERAL PROVISIONS

§ 152.001 TITLE

This chapter shall be known and may be cited as the “Town of Spencer, Indiana Zoning Ordinance”.

(Ord. 2019-18, passed 9-16-2018)

§ 152.002 PURPOSE.

(A) This chapter regulates the use of land and the location of buildings and structures to promote the health, safety, and general welfare of all citizens of the town; it provides for the most appropriate use of land and the conservation and stabilization of property values; it implements the Spencer Zoning Comprehensive Plan; and it provides penalties for violations of its provisions.

(B) It also creates the Advisory Plan Commission, Board of Zoning Appeals and, the Department of Planning, establishes rules, regulations, and procedures for administering the provisions of the Chapter.

(Prior Code, Ch. 9, Art. I) (Ord. 1987-2, passed 2-2-1987)(Am. Ord 2019-18, passed 9-16-2019)

§ 152.003 SEVERABILITY

Should any section, subsection, paragraph, subparagraph, clause, word, or provision of this chapter be declared by the courts to be unconstitutional or invalid, the decision shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

(Ord. 2019-18, passed 9-16-2019)

§ 152.004 JURISDICTION

This chapter shall apply to all incorporated areas of the Town of Spencer which are further defined in Title I, Chapter 11.

(Ord. 2019-18, passed 9-16-2019)

§ 152.005 CONFLICTS WITH OTHER PROVISIONS.

This chapter is not intended to change or alter any easement, covenant, restriction, or private agreement, except that if this chapter is more restrictive, this chapter shall prevail. If the provisions of an easement, covenant, restriction, or private agreement are more restrictive, the provisions shall remain in force.

(Prior Code, Ch. 9, Art. X) (Ord.1987-2, passed 2-2-1987) (Ord. 2019-18, passed 9-16-2019)

§ 152.006 AMENDMENTS TO ZONING MAP, ZONING ORDINANCE, OR COMPREHENSIVE PLAN

Amendments to the zoning map, zoning ordinance or comprehensive plan shall be done pursuant to the provisions of Indiana Code 36-7-4 *et seq.*

(I.C. 36-7-4 *et seq.*) (Ord. 2019-18, passed 9-16-2019)

§ 152.007 ENFORCEMENT

(A) *Town Council President responsible.* It shall be the duty of the Town Council President to enforce this chapter and any violations or non-compliance will be referred to the Town Attorney for legal action.

(B) *Permit issuance.* Any person who has the duty to issue permits shall obey the provisions of this chapter, and shall not issue permits for any building, use, or purpose in conflict with this chapter. Any permit inadvertently issued in conflict with this chapter shall be null and void.

(Prior Code, Ch. 9, Art. XI) (Ord.1987-2, passed 2-2-1987) (Am. Ord 2019-18, passed 9-16-2018)

§ 152.008 DEFINITIONS.

(A) Application and interpretation.

(1) For the purpose of these regulations, certain numbers, abbreviations, terms, words and phrases used herein shall be used, interpreted and defined as set forth in this article.

(2) Whenever any words and phrases used herein are not defined herein, but are defined in the state laws regulating the creation and function of various planning agencies, any such definition therein shall be deemed to apply to the words and phrases used herein, except when the context otherwise requires.

(3) For the purpose of these regulations, certain words and phrases used herein shall be interpreted as follows:

(i.) The word “person” includes an individual, firm, association, organization, partnership, trust, company, corporation or any other legal entity.

(ii.) The masculine includes the feminine.

(iii.) The present tense includes the past and future tenses; the singular number includes the plural.

(iv.) The word “shall” is a mandatory requirement; the word “may” is a permissive requirement; and the word “should” is a preferred requirement.

(v.) The words “used” or “occupied” include the words “intended, arranged or designed to be used or occupied”.

(vi.) The word “lot” includes the words “plot”, “parcel” and “tract”.

(4) If a manifest error be discovered consisting of the misspelling of any word or words, the omission of any word or words necessary to express the intention of the provisions affected, the use of a word or words to which no meaning can be attached, or the use of a word or words when another word or words was clearly intended to express the intent, the spelling shall be corrected and the word or words supplied, omitted or substituted as will conform with the manifest intention, and the provision shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any question exists regarding the nature or extent of the error.

(B) *Words and phrases defined.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. For the purpose of this chapter, the following definitions shall apply unless the context indicates or requires a different meaning.

ALTERATION. Any change, addition or modification in construction, or any change in the structural members of a building, such as bearing walls, columns, beams or girders.

APPLICANT. A person or entity having an ownership interest in land for the use of which approval is sought from the Plan Commission or the Board of Zoning Appeals. The term includes a contract buyer whose accepted offer to purchase is contingent upon approval of the Plan Commission or Board of Zoning Appeals.

BOND. Any form of security including a cash deposit, surety bond, collateral, property or instrument of credit in an amount and form satisfactory to the Plan Commission.

BUILDING. Any structure built for the shelter or enclosure of persons, animals, property or substances of any kind, excluding fences.

BUSINESS. An occupation, employment, or enterprise that occupies time, attention, labor and materials; or where merchandise is sold or exhibited, or where services are offered.

COMMISSION. The Spencer Advisory Plan Commission.

COMPREHENSIVE PLAN. A comprehensive plan for the development of the town and any amendments to the plan; prepared by the Advisory Plan Commission.

DEVELOPMENT: Any man-made change to improved or unimproved real estate including but not limited to:

- (1) construction, reconstruction, or placement of a structure or any addition to a structure;
- (2) installing a manufactured home on a site, preparing a site for a manufactured home or installing a recreational vehicle on a site for more than 180 days;
- (3) installing utilities, erection of walls and fences, construction of roads or similar projects;
- (4) construction of flood control structures such as levees, dikes, dams, channel improvements, etc.;
- (5) mining, dredging, filling, grading, excavation or drilling operations;
- (6) construction and/or reconstruction of bridges or culverts;
- (7) storage of materials; or
- (8) any other activity that might change the direction, height or velocity of flood or surface waters.

"Development" does not include activities such as the maintenance of existing structures and facilities such as painting, re-roofing; resurfacing roads; or gardening, plowing and similar agricultural practices that do not involve filling, grading, excavation, or the construction of permanent structures.

DISTRICT. An area identified and zoned for certain purposes and use.

DWELLING:. A fixed structure or building containing one or more dwelling units.

EASEMENT. An authorization grant by a property owner for the use by another of any designated part of his or her property for a clearly specified purpose(s).

FLOOD HAZARD AREA. A flood plain, or portion thereof, which has not been adequately protected from floodwater by means of dikes, levees, reservoirs or other works approved by the State Department of Natural Resources.

FLOOD PLAIN. Any land area that adjoins the channel of a river, stream, lake, or other bodies of water that could be inundated by flood waters which can be reasonably expected in that area.

IMPROVEMENTS. Any work connected with servicing or furnishing facilities, such as grading, street building, curbs, gutters, driveway approaches, sidewalks, water lines, sewers, culverts, bridges, utilities and other appropriate items.

INDIANA CODE. The Burns Indiana Statutes Code Edition, which codifies all state statutes for reference purposes. The latest edition with any amending supplements must be referred to for the laws currently in force and applicable. (May be abbreviated as *I.C.* herein.)

INFRASTRUCTURE. The fixed public works and facilities necessary in a community, such as sewers, water systems, storm and drainage systems and streets.

INTERESTED PARTIES. Those persons as defined by the rules of the Plan Commission or the Board of Zoning Appeals who are to be given notice of an application.

JUNK. Old and dilapidated modes of conveyance such as automobiles, trucks, tractors, watercraft and other vehicles and parts thereof; wagons and other kinds of vehicles and parts thereof; household appliances, scrap building material, scrap contractors' equipment, tanks, casks, cans, barrels, boxes, drums, piping, bottles, glass, old iron machinery, rags, paper, excelsior, hair, mattresses, beds and bedding or any other kind of scrap or waste material, which is stored, kept, handled or displayed.

JUNK YARD. A lot, land or structure, or part thereof at which property is or may be salvaged for reuse, resale, reduction or similar disposition and is owned, possessed, collected, accumulated, dismantled or sorted, including, but not limited to, used or salvaged base metal or metals, their compounds or combinations; used or salvaged rope, bags, paper, rags, glass, rubber, lumber, millwork,

brick and similar property except animal matter; and used motor vehicles, machinery or equipment which are used, owned, or possessed for the purposes of wrecking or salvaging the parts.

JURISDICTION. Jurisdiction of local government means all land within its boundaries and any land outside its boundaries over which it is authorized to exercise powers under these regulations.

LAND. The earth, water and air above, below or on the surface, and includes any improvements or structures customarily regarded as land.

LAND USE. Activity conducted on real estate under the jurisdiction of the Plan Commission or the Board of Zoning Appeals.

LIVESTOCK. Any animal which has been domesticated primarily for agricultural purposes, but not including, animals usually considered house pets such as dogs, cats, canaries or any other similar animal or fowl.

LOADING SPACE, OFF-STREET. Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to the vehicles when required off-street parking spaces are filled. Required **OFF-STREET LOADING SPACE** is not to be included as off-street parking space in computation of required off-street parking space. All **OFF-STREET LOADING SPACES** shall be located totally outside of any street or alley right-of-way.

LOT AREA. The geometric, horizontal area contained within the boundaries of a lot.

LOT COVERAGE. The ratio of enclosed ground floor area of all buildings on a lot to the horizontally projected area of the lot expressed as a percentage.

MANUFACTURED HOME. As set forth in 42 U.S.C. §§ 5401 *et seq.* as it existed on January 1, 2007, a structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein; except that the term shall include any structure that meets all the requirements of this section except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this chapter; and except that the term shall not include any self-propelled recreational vehicle. The term manufactured home includes former descriptions of factory assembled housing commonly called mobile homes, modular homes, and sectional homes.

NON-CONFORMING USE. Any legally existing use, within a building, or on a tract of land that does not conform to the use regulations of this chapter for the district it is located in, either on the effective date of the chapter or as a result of amendments made later.

OPEN SPACE. A public or private outdoor area expressly set aside for the use and benefit of many unrelated people. The area may include natural environment features, water areas, swimming pools, tennis courts and other recreational facilities that the Plan Commission deems of the same character. Streets, parking areas, structures for habitation and the like shall not be included in open space area calculations.

ORDINANCE. Any legislative action, however denominated, of a local government, which has the force of law, including any amendment or repeal of any ordinance.

OWNER. Any person or other legal entity having title or a proprietary interest in a property.

PARCEL. A tract of land assigned a separate tax identification number by the county taxing authorities; however, parcels in different sections, townships or ranges, included in one legal description, are to be considered one parcel even though they have separate tax identification numbers.

PARKING SPACE. For the purposes of this chapter, a parking space shall consist of an area adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room.

PERSON. An individual, firm, partnership, company or corporation.

PLANNING AREA. The land area in the corporate limits of the town.

PLAT. The drawing, map or plan of a subdivision or other tract of land or a replat of such including certification, descriptions and approval.

PUBLIC RIGHT-OF-WAY. A general term denoting land, property or interest therein, usually in a strip, acquired for or devoted to a transportation facility.

SETBACK. A line parallel to the relevant lot line (front, back, side) between which no buildings or structures may be erected as prescribed in the Zoning Ordinance.

SETBACK LINE. A line established by the Zoning Ordinance, generally parallel with and measured from the lot line, defining the limits of a yard in which no building or structure may be located above ground, except as may be provided in the ordinance.

SEWAGE DISPOSAL SYSTEM. The Town of Spencer Sewer System or any other approved sewage treatment device.

SIDEWALK. The portion of the road right-of-way outside the roadway that is improved for the use of pedestrian traffic.

STREETS. All public ways, streets, avenues, roads, lanes and alleys.

STRUCTURE. Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, ***STRUCTURES*** include buildings, walls, fences and signs.

UNNECESSARY HARDSHIP. A significant economic injury that arises from the strict application of the ordinance to the conditions of a particular, existing parcel of property, has effectively deprived the parcel owner of all reasonable economic use of the parcel, and is clearly more significant than compliance cost or practical difficulties.

UTILITY. Any facility used to provide a service that the public has a right to demand.

(Prior Code, Ch. 8, Art. II) (Ord. 1985-1, passed 1-21-1985) (Ord. 1987-2, passed 2-2-1987, Am Ord. 2013-9, passed 6-17-2013) (Am. Ord. 2019-18, passed 9-16-2018)

ADMINISTRATION

§ 152.020 THE SPENCER COMPREHENSIVE PLAN.

(A) *General.* The Comprehensive Plan shall be the basis comprehensive document used to guide the orderly development of the town:

(B) *Basis of the Comprehensive Plan.* The Comprehensive Plan shall be based on:

(1) Careful, comprehensive survey and study of existing conditions and the probable future growth of the town; and

(2) Maps, plats, or materials giving information, locations, extent and characteristics of history, population, its density, physical conditions, land use, blighted areas, streets, streams, floods, utilities, transportation, parks and recreation, public buildings and institutions, educational facilities, and/or any other factors that are a part of the structure of the town.

(C) *Zoning districts.*

(1) The Advisory Plan Commission shall establish and recommend the zoning districts that divide the town into areas of the kind, character, number and shape necessary to promote the health, welfare, safety, comfort and convenience of all.

(2) The districts created shall be subject to restrictions that may be necessary and appropriate in that district, such as use restrictions, structure restrictions or other requirements.

(D) *Adoption of Comprehensive Plan.* Shall be in accordance with Indiana state laws and shall be incorporated herewith as if fully set forth herein.

(Prior Code, Ch. 8, Art. VI)(Ord. 1985-1, passed 1-21-1985) (Am. Ord 2019-18, passed 9-16-2018)

§ 152.021 ADVISORY PLAN COMMISSION

The Spencer Town Council shall create a Town Advisory Plan Commission in order to promote the orderly growth of the town; to improve the health, welfare, safety and convenience of its residents; and to plan development of residential, industrial, agricultural and business needs for growth.

(Prior Code, Ch. 8, Art. I) (Ord. 1985-1, passed 1-21-1985) (Ord. 2019-18, passed 9-16-2019)

Cross-reference: *Subdivisions, Chapter 153*

§ 152.022 ADVISORY PLAN COMMISSION MEMBERSHIP.

(A) *Appointment and term of office.* The Advisory Plan Commission shall consist of 7 members who shall be qualified by knowledge and experience in the development of the town and its planning area.

(1) The Town Council shall appoint 3 persons who must be elected or appointed town officials or employees of the town government, as members.

(2) The President of the Town Council shall appoint 4 persons who are residents of the town, of whom no more than 2 shall be of the same political party.

(3) Each term of office shall be 4 years, with each member serving until his or her successor is appointed and qualified.

(B) *Oath of office.* Each Advisory Plan Commission member, before beginning his or her duties, shall take an oath of office on the certification of his or her appointment. The oath shall be filed in the Clerk-Treasurer's office.

(C) *Conflict of interest.* Any member of the Advisory Plan Commission who has a direct or indirect financial interest in a matter before the Advisory Plan Commission shall disclose his or her interest and shall not vote, participate or discuss the matter at hearings.

Statutory Reference: Indiana Code 36-7-4-207

(Prior Code, Ch. 8, Art. III) (Ord. 1985-1, passed 1-21-1985) (Am. Ord 2019-18, passed 9-16-2018)

§ 152.023 ADVISORY PLAN COMMISSION ORGANIZATION.

(A) *Officers.* After appointment, members of the Advisory Plan Commission shall meet and elect a President and Vice-President for annual terms and shall adopt the rules and by-laws as necessary. The Advisory Plan Commission may appoint a Secretary who is not a member of the Advisory Plan Commission.

(B) *Meetings.*

(1) The Advisory Plan Commission normally meets at least once a month as determined by the President. All meetings of the Advisory Plan Commission shall be open to the public. Written records of all proceedings shall be kept and be a part of the Advisory Plan Commission's files.

(2) Special meetings may be called by the President or by 2 members on written request to the Secretary. The Secretary shall notify all members at least 3 days in advance of a special meeting, in writing. Written notice of special meetings is not required if members were notified at a regular meeting, and if all members are present at the regular meeting.

(C) *Rules of Procedure.*

(1) The Advisory Plan Commission shall adopt rules of procedure, in writing, covering the following:

- (a) Meeting times;
- (b) Membership and Terms;
- (c) Duties of Officers and Staff;
- (d) Establishment of Committees;
- (e) Order of Business;
- (f) Application Procedures including filing deadlines, eligible applicants, filing fees, amending applications; withdrawing applications, refiling after denial or withdrawal;
- (g) Definition of Interested Parties;
- (h) Notice Requirements;
- (i) Hearing Procedures including order of testimony; form and admissibility of evidence; time limits on testimony; sign-in requirements; administration of oaths; cross examination of witnesses; orderly conduct;
- (j) Continuances of meetings;
- (k) Conflicts of Interest;
- (l) Communications outside of meetings;

- (m) Decisions including approvals/favorable recommendations; denials/unfavorable recommendations; no recommendations; findings of fact; dismissals;
- (n) Commitments and conditions;
- (o) Amendments; and
- (p) Suspension of Rules.

(D) *Quorum*. A quorum consists of a majority of the entire membership of the Advisory Plan Commission.

(Prior Code, Ch. 8, Art. IV) (Ord. 1985-1, passed 1-21-1985) (Am. Ord 2019-18, passed 9-16-2018)

§ 152.024 ADVISORY PLAN COMMISSION POWERS AND DUTIES.

The Advisory Plan Commission shall:

(A) Make recommendations to the Town Council concerning the operation of the Advisory Plan Commission and report on planning activities;

(B) Prepare a Comprehensive Plan for the Planning Area which will promote the general welfare, health, safety, and convenience as the town develops;

(C) Make recommendations to the Town Council on the adoption of a Comprehensive Plan, its zoning districts, and subdivisions; and to recommend changes or amendments when needed;

(D) Approval of Development Plans;

(E) Prescribe uniform rules for investigations and hearings;

(F) Prepare, publish, distribute reports, ordinances and other materials;

(G) Keep a complete record of all departmental proceedings and assume responsibility for preservation of all papers and documents;

(H) Adopt a seal and certify to all official acts;

(I) Establish committees as necessary; and

(J) Approve assignments of street numbers to new lots, and name new streets. Exercise all other powers and duties prescribed by law or assigned by the Town Council.

(Prior Code, Ch. 8, Art. V) (Ord. 1985-1, passed 1-21-1985) (Am. Ord 2019-18, passed 9-16-2018)

§ 152.025 BOARD OF ZONING APPEALS (BZA)

The Spencer Town Council shall create a Town Board of Zoning Appeals in order to hear and decide matters pertaining to requests for variances and conditional use applications.

(Ord 2019-18, passed 9-16-2018)

§ 152.026 BOARD OF ZONING APPEALS (BZA) MEMBERSHIP.

(A) *Number of members.* The BZA shall consist of 5 members:

(1) Three citizen members are appointed by the President of the Town Council; 1 must be a member of the Advisory Plan Commission, 2 shall not be members of the Advisory Plan Commission;

(2) One citizen member is appointed by the Town Council, who shall not be a member of the Advisory Plan Commission; and

(3) One citizen member is appointed by the Advisory Plan Commission, who must be a Advisory Plan Commission member, and cannot be the same person as appointed by the Town Council President in division (A)(1) above.

(B) *Requirements.* No member of the BZA shall hold other elected or appointed office except as permitted in I.C. 36-7-4-902; in town, county or state government. All members of the BZA must reside in Spencer.

(C) *Length of term.* Each BZA member serves a 4 year term, and shall take an oath of office to be filed in the Clerk-Treasurer's office.

(D) *Removal of Member.*

(1) The appointing authority may remove a member from the Board for “cause”, citing written reasons for the removal. A member removed under this section may only appeal the removal to the court of appropriate jurisdiction. Additionally, a member who misses three (3) or more consecutive regular meetings will be considered as resigned from the Board.

(Prior Code, Ch. 9, Art. VIII, § 1) (Ord. 1987-2, passed 2-2-1987) (Am. Ord 2019-18, passed 9-16-2018)

§ 152.027 BOARD OF ZONING APPEALS (BZA) ORGANIZATION

(A) At the first meeting each year, the BZA shall elect a Chairperson and a Vice-Chairperson from its membership.

(B) *Meetings.*

(1) The BZA normally meets at least once a month as determined by the Chairperson. All meetings of the BZA shall be open to the public. The BZA shall keep minutes and records of all of its proceedings:

(a) All minutes and records are public records and shall be kept in the Municipal Building.

(b) The BZA shall, in all cases heard by it, make written findings of fact.

(c) Votes on any BZA action shall be recorded.

(2) *Quorum*. A quorum consists of a majority of the entire membership of the BZA.

(Prior Code, Ch. 9, Art. VIII, § 2, §3, & § 4) (Ord. 1987-2, passed 2-2-1987) (Am. Ord 2019-18, passed 9-16-2018)

§ 152.028 DEPARTMENT OF PLANNING AND ZONING; PLANNING ADMINISTRATOR

(A)The Spencer Town Council shall appoint a Planning Administrator for the Department of Planning and Zoning.

(B)The Planning Administrator, shall enforce this Ordinance, and in support of such authority shall:

(1) Issue all permits and keep permanent records thereof;

(2) Conduct such inspections of buildings, structures and uses of land as

are necessary to determine compliance with the terms of this Ordinance;

(3) Issue violation notices for violations of the provisions of this Ordinance;

(4) Maintain permanent and current records of this Ordinance, including all maps, amendments, special exceptions, variances, and records of hearings thereon;

(5) Provide and maintain public information relative to all matters arising under this Ordinance;

(6) Provide interpretation of this Ordinance, when necessary, and such technical and clerical assistance as the Board of Zoning Appeals and Advisory Plan Commission;

(7) Review all proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by local, Federal or State law; and

(8) Review all applications for improvement location permits for new construction to ascertain whether the proposed construction or addition lies in a flood hazard area.

(9) Review any petition or plans presented to the Planning Administrator, prepare staff reports, meeting minutes and agendas, and maintain files.

(Ord. 2019-18, passed 9-16-2019)

§ 152.029 EXPARTE COMMUNICATION

A person may not communicate with any member of the Board of Zoning Appeals or the Plan Commission prior to a public hearing with the intent to influence the member's action on a matter pending before a board or commission.

Statutory Reference: Indiana Code 36-7-4-920

(Ord. 2019-18, passed 9-16-2019)

§ 152.030 CONFLICTS OF INTEREST

(A) Board of Zoning Appeals. A board of zoning appeals member may not participate in a hearing or decision of that board concerning a zoning matter in which he/she has a conflict of interest, which includes the following:

- (1) The member is biased or prejudiced or otherwise unable to be impartial; or
- (2) The member has a direct or indirect financial interest in the outcome of the decision.

(B) Plan Commission. A plan commission member may not participate in a hearing or decision concerning a matter in which he/she has a conflict of interest, which includes the following:

- (1) The member is biased or prejudiced or otherwise unable to be impartial; or
- (2) The member has a direct or indirect financial interest in the outcome of the decision

Statutory Reference: Indiana Code 36-7-4-909(a) and IC-36-7-4-223(c)

(Ord. 2019-18, passed 9-16-2019)

ESTABLISHMENT OF ZONING DISTRICTS

§ 152.040 BASIC DISTRICTS.

The planning area is divided into the following districts:

- (A) Agricultural;
- (B) Residential-1 (R-1)
- (C) Residential-2 (R-2);
- (D) Commercial Limited;
- (E) Commercial Arterial;
- (F) Commercial Downtown;
- (G) Business Park;
- (H) Light Industrial;
- (I) Institutional Public; and
- (J) Planned Unit Development (PUD)

(Prior Code, Ch. 9, Art. IV, § 1) (Ord. 1987-2, passed 2-2-1987)(Ord. 2019-18, passed 9-16-2019)

§ 152.041 TOWN ZONING MAP.

(A) The Zoning Districts shown on the Town Zoning Map, and notations on the map, are a part of this subchapter.

(B) The Town Zoning Map shall have the signatures of the Town Council President and the Advisory Plan Commission President, certifying that this is the Town Map referred to in this subchapter. (Prior Code, Ch. 9, Art. IV, § 2) (Ord. 1987-2, passed 2-2-1987) (Ord. 2019-18, passed 9-16-2019)

§ 152.042 ZONING DISTRICT BOUNDARIES.

(A) Boundaries shown that approximately follow center lines of streets, highways, alleys, streams, rivers, railroad rights-of-way, platted lot lines or parallel to or extensions of, these features shall be construed as following these lines.

(B) Where physical or cultural features exist on the ground are different than the Zoning Map, or in other circumstances not covered in division (A) above, the Advisory Plan Commission shall determine the boundaries.

(Prior Code, Ch. 9, Art. IV, § 3) (Ord. 1987-2, passed 2-2-1987) (Am. Ord 2019-18, passed 9-16-2018)

ESTABLISHMENT AND PURPOSES OF DISTRICTS

§ 152.050 AGRICULTURAL

Single and multi-family dwellings, mobile homes, compact homes, manufactured homes, and structures in support of agricultural operations and/or other agricultural pursuits, except for the raising or harboring of livestock, fowls, or other domestic animals within the corporate limits that may be prohibited by other town ordinances.

(Prior Code, Ch. 9, Art. V, § 1) (Ord.1987-2, passed 2-2-1987) (Ord. 2019-18, passed 9-16-2019)

§ 152.051 RESIDENTIAL-1 (R-1)

Single and multi-family dwellings and shall not include manufactured homes or manufactured home parks.

(Prior Code, Ch. 9, Art. V, § 1) (Ord.1987-2, passed 2-2-1987) (Ord. 2019-18, passed 9-16-2019)

§ 152.052 RESIDENTIAL-2 (R-2)

Single and multi-family dwellings, compact homes, manufactured homes, manufactured home parks

(Prior Code, Ch. 9, Art. V, § 1) (Ord.1987-2, passed 2-2-1987) (Ord. 2019-18, passed 9-16-2019)

§ 152.053 COMMERCIAL LIMITED

Small scale retail goods and services. Commercial uses that are highly compatible with residential properties and require minimal parking requirements. Limited commercial uses do not create high traffic volume and have limited outdoor lighting and signage. Permitted uses may include, but are not limited to, small retail stores, beauty shops, barber shops, daycare facilities, and professional and business offices.

(Ord. 2019-18, passed 9-16-2019)

§ 152.054 COMMERCIAL ARTERIAL

Medium to high scale commercial services that create minimal detrimental impacts to the surrounding areas. Requires sufficient parking and is situated along major thoroughfares. This type of use would create high traffic volume and require larger lot space for use. Permitted uses may include, but are not limited to, grocery stores, larger retail facilities, gas stations, and medical facilities.

(Ord. 2019-18, passed 9-16-2019)

§ 152.055 COMMERCIAL DOWNTOWN

Central business district of the town with a variety of uses and intensities. Generally requires limited or restricted parking (time limits), and pedestrian/consumer customers and patrons.

(Ord. 2019-18, passed 9-16-2019)

§ 152.056 BUSINESS PARK

Mixture of business or office related uses that provide large scale employment opportunities for the surrounding region and require ample parking requirements.

(Ord. 2019-18, passed 9-16-2019)

§ 152.057 LIGHT INDUSTRIAL

Manufacturing activity that uses moderate amounts of partially processed materials to produce items of relatively high value per unit weight. Activity generally requires only a small amount of raw materials, area and power. The value of the goods produced is relatively low and they are easy to transport. Light industries cause relatively little pollution when compared to heavy industries. Light Industrial operations must:

- A. Be carried on in such a manner and with such precautions against fire and explosion hazards;
- B. Store all raw materials, finished products, machinery, and equipment, including company-owned or -operated trucks and motor vehicles, within an entirely closed building or sight-obscuring, nonpierced fence not less than six feet in height. Liquids shall be stored in underground tanks in accordance with uniform standards prescribed by IDEM;
- C. Emit no obnoxious odors of any kind;
- D. Exhaust no waste into the air or dust created by industrial operation;
- E. Discharge no treated or untreated sewage or industrial waste into any surface water or onto open ground;
- F. Carry on no operation that would produce heat or glare perceptible from any property line of the lot on which the industrial operation is located;
- G. Use no industrial and exterior lighting in a manner that produces glare on public highways and neighboring property;
- H. Conduct no mining, extracting, filling or soil-stripping operations;
- I. Use only oil, gas, or electricity as industrial fuel;
- J. Conform to the most recent Town ordinance concerning noise levels.

(Prior Code, Ch. 9, Art. V, § 1) (Ord.1987-2, passed 2-2-1987) (Ord. 2019-18, passed 9-16-2019)

§ 152.058 INSTITUTIONAL/PUBLIC

Public related operations and uses. Permitted uses may include, but are not limited to, schools, recreational facilities, libraries, religious facilities, clubs, lodges, meeting halls, cemeteries, and community centers.

(Ord. 2019-18, passed 9-16-2019)

§ 152.059 PLANNED UNIT DEVELOPMENT (PUD)

A planned unit development (PUD) is a type of building development and also a regulatory process. As a building development, it is a designed grouping of both varied and compatible land uses,

such as housing, recreation, commercial centers, and industrial parks, all within one contained development or subdivision. This type of development often times includes mixed zoning classifications.

(Ord. 2019-18, passed 9-16-2019)

VARIANCE

§ 152.070 VARIANCE OF USE.

(A) The BZA shall approve or deny variances of use from the terms of the Zoning Ordinance. The BZA may impose reasonable conditions as a part of its approval.

(B) A variance may be approved upon a determination in writing that:

(1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community.

(2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.

(3) The need for the variance arises from some condition peculiar to the property involved.

(4) The strict application of the Zoning Ordinance will constitute unnecessary hardship if applied to the property involved.

(5) The approval is substantially in accord with the Comprehensive Plan.

Statutory Reference: Indiana Code 36-7-4-918.4

(Prior Code, Ch. 9, Art. VIII, § 8) (Ord. 1987-2, passed 2-2-1987) (Ord. 2019-18, passed 9-16-2019)

§ 152.071 VARIANCES FROM DEVELOPMENTAL STANDARDS.

(A) The BZA shall approve or deny variances from the developmental standards of the Zoning Ordinance.

(B) Approval can be granted upon a written determination that:

(1) The approval will not be injurious to the public health, safety, morals and general welfare of the community.

(2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.

(3) The strict application of terms in the Zoning Ordinance will result in practical difficulties in the use of the property.

Statutory Reference: Indiana Code 36-7-4-918.5

(Prior Code, Ch. 9, Art. VIII, § 9) (Ord. 1987-2, passed 2-2-1987) (Ord. 2019-18, passed 9-16-2019)

§ 152.072 PUBLIC HEARING BY BOARD OF ZONING APPEALS.

The Board of Zoning Appeals shall schedule a public hearing after a petition is received. Notices shall be Published in accordance with Indiana Code 5-3-1 et seq. and §152.073

(Ord. 2019-18, passed 9-16-2019)

§ 152.073 NOTICE OF PUBLIC HEARING IN NEWSPAPER.

(A) Before holding the public hearing required in §152.062 notice of the hearing shall be given in the newspaper of general circulation in Owen County at least ten days before the date of the hearing. The notice shall set forth the time and place of the public hearing, the geographic area to which the proposal applies and a summary of the proposed amendment.

(B) The Board of Zoning Appeals shall give notice of the hearing by publication under I.C. 5-3-1. The notice must state:

(1) If the proposal contains or would add or amend any penalty or forfeiture provisions, the entire text of those penalty or forfeiture provisions;

(2) The place where a copy of the proposal is on file for examination before the hearing;

(3) That written objections to the proposal that are filed with the Secretary of the Board of Zoning Appeals before the hearing will be considered;

(4) The oral comments concerning the proposal will be considered; and

(5) The hearing may be continued from time to time as may be found necessary.

(Ord. 2019-18, passed 9-16-2019)

§ 152.074 NOTICE TO PARTIES OF INTEREST.

Written notice of the hearing shall be mailed by the applicant, by registered mail, at least 10 days before the day of the public hearing, to each person who owns an interest in real estate adjoining the property involved in the petition including owners of real estate at corners, and across streets, alleys or easements, as well as others who may share a common boundary; all other person who, in the opinion of

the applicant, have an interest in the outcome of the petition; and any other owners of real estate who did not join as an original petitioner or who did not file a waiver of notice of hearing prior to the day of public hearing. The failure to deliver the notification, as provided in this section, shall not invalidate any such amendment. The notice shall contain the same information as required of notices published in newspapers as specified in § 152.073.

(Ord. 2019-18, passed 9-16-2019)

§ 152.075 CRITERIA FOR GRANTING EXCEPTIONS, VARIANCES.

(A) The BZA shall investigate each proposed use to determine if it is related to adjacent land use and with other uses permitted in the Zoning District.

(B) The BZA shall hold a public hearing on each request for an exception or variance in a Zoning District.

(C) The BZA may require that adequate landscaping or buffering is provided.

(D) The BZA may require that off-street parking is provided.

(E) The BZA may impose other conditions to ensure that compatibility with surroundings are maintained.

(F) If a person was granted a variance and does not comply with any of the above, the BZA may terminate the exception or variance.

(Prior Code, Ch. 9, Art. VIII, § 13) (Ord. 1987-2, passed 2-2-1987) (Ord. 2019-18, passed 9-16-2019)

CONDITIONAL USE

§ 152.080 CONDITIONAL USE; GENERAL

It is recognized that an increasing number of new kinds of uses are appearing daily, and that many of these and some other more conventional uses possess characteristics of such unique and special nature relative to location, design, size, method of operation, circulation and public facilities that each specific use must be considered individually. Conditional uses, while requiring special consideration by the Board of Zoning Appeals, shall be deemed permitted uses in the districts in which they are provided.

(Ord. 2019-18, passed 9-16-2019)

§ 152.081 GENERAL STANDARDS APPLICABLE TO ALL CONDITIONAL USES.

(A) The Board of Zoning Appeals shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence showing that the use at the proposed location:

- (1) Is in fact a conditional use as established under the provisions hereof for the zoning district involved;
- (2) Will be harmonious with and in accordance with the general objectives, or with any specific objective of the Comprehensive Plan and/or the Zoning Ordinance;
- (3) Will be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that the use will not change the essential character of the same area;
- (4) Will not be hazardous or disturbing to existing or future neighboring uses;
- (5) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;
- (6) Will not create excessive additional requirements at public expense for public facilities and services and will not be detrimental to the economic welfare of the community;
- (7) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
- (8) Will have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares; and
- (9) Will not result in the destruction, loss or damage of natural, scenic or historic features of major importance.

(Ord. 2019-18, passed 9-16-2019)

§ 152.082 PUBLIC HEARING BY BOARD OF ZONING APPEALS.

The Board of Zoning Appeals shall schedule a public hearing after a petition is received. Notices shall be Published in accordance with Indiana Code 5-3-1 et seq. and §152.083

(Ord. 2019-18, passed 9-16-2019)

§ 152.083 NOTICE OF PUBLIC HEARING IN NEWSPAPER.

(A) Before holding the public hearing required in §152.062 notice of the hearing shall be given in the newspaper of general circulation in Owen County at least ten days before the date of the hearing. The notice shall set forth the time and place of the public hearing, the geographic area to which the proposal applies and a summary of the proposed amendment.

(B) The Board of Zoning Appeals shall give notice of the hearing by publication under I.C. 5-3-1. The notice must state:

- (1) If the proposal contains or would add or amend any penalty or forfeiture provisions, the entire text of those penalty or forfeiture provisions;
- (2) The place where a copy of the proposal is on file for examination before the hearing;
- (3) That written objections to the proposal that are filed with the Secretary of the Board of Zoning Appeals before the hearing will be considered;
- (4) The oral comments concerning the proposal will be considered; and
- (5) The hearing may be continued from time to time as may be found necessary.

(Ord. 2019-18, passed 9-16-2019)

§ 152.084 NOTICE TO PARTIES OF INTEREST.

Written notice of the hearing shall be mailed by the applicant, by registered mail, at least 10 days before the day of the public hearing, to each person who owns an interest in real estate adjoining the property involved in the petition including owners of real estate at corners, and across streets, alleys or easements, as well as others who may share a common boundary; all other person who, in the opinion of the applicant, have an interest in the outcome of the petition; and any other owners of real estate who did not join as an original petitioner or who did not file a waiver of notice of hearing prior to the day of public hearing. The failure to deliver the notification, as provided in this section, shall not invalidate any such amendment. The notice shall contain the same information as required of notices published in newspapers as specified in § 152.083.

(Ord. 2019-18, passed 9-16-2019)

§152.085 SUPPLEMENTARY CONDITIONS AND SAFEGUARDS.

In granting any conditional use, the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this chapter. Violations of such conditions and safeguards,

when made a part of the terms upon which the conditional use is granted, shall be deemed a violation of this chapter.

(Ord. 2019-18, passed 9-16-2019)

§152.086 EXPIRATION OF CONDITIONAL USE PERMIT.

A conditional use permit shall be deemed to authorize only one particular use and the permit shall automatically expire if, for any reason, the use has not commenced within one year.

(Ord. 2019-18, passed 9-16-2019)

§152.087 CONDITIONAL USE; TYPES

(A) Junk Yards/Salvage Yards

(1) May be granted in Light Industrial Districts only.

(2) Proper state approval and licensing is required.

(3) The yards must be entirely enclosed by a fence or wall, except for driveways, so that no junk or wreckage can be seen from adjacent areas.

(B) Home businesses

(1) Shall be limited to activities such as operation of an office, a personal service business, or the creation and/or sale of arts and crafts. The operation of a home business shall normally be confined to the residents of the dwelling unit.

(2) Except for the creation/production of arts and crafts, there shall be no goods, samples, materials, or other objects sold, stored, displayed manufactured, or proceeded on the premises in connection with the operation.

(3) Home business activity shall be confined to the dwelling unit or garage and shall not be more than 10% of the total ground floor area.

(4) Off-street parking may be required by the BZA for customers of a home business.

(C) Kennels or other uses that entail boarding, training, or raising dogs, cats, birds, or other animals shall not be permitted in Residential Zoning Districts unless by special exception granted by the BZA.

(D) Repair shops.

(1) Shall not be permitted in Residential Zoning Districts unless by special exception granted by the BZA.

(2) Repair shops in any district shall provide off-street parking for vehicles or other items being held for repair.

(E) Other uses may be granted by the BZA when it determines that the use will be compatible and that other conditions essential to maintain the character of the zone are met.

(Prior Code, Ch. 9, Art. VIII, § 14) (Ord. 1987-2, passed 2-2-1987) (Ord. 2019-18, passed 9-16-2019)

REZONE

§ 152.090 GENERAL

Whenever the public necessity, convenience, general welfare or good zoning practices require, the Spencer Town Board may, by ordinance and after receipt of recommendations thereon from the Plan Commission, and subject to procedures provided by law, amend, supplement, change or repeal the regulations, restrictions and zoning district boundaries or classification of property.

Statutory Reference: Indiana Code 36-7-4-600 et seq

(Ord. 2019-18, passed 9-16-2019)

§ 152.091 INITIATION OF ZONING AMENDMENTS.

(A) Amendments to this chapter may be initiated in one of the following ways:

(1) By adoption of a motion by the Plan Commission;

(2) By adoption of a resolution by Spencer Town Board; and

(3) For zoning maps, by the filing of a petition with the Plan Commission by at least 50% of the owners of property within the area proposed to be changed by the amendment.

Statutory Reference: Indiana Code 36-7-4-602

(Ord. 2019-18, passed 9-16-2019)

§ 152.092 PUBLIC HEARING BY PLAN COMMISSION.

The Plan Commission shall schedule a public hearing after a petition is received. Notices shall be published in accordance with Indiana Code 5-3-1 et seq. and §152.093

(Ord. 2019-18, passed 9-16-2019)

§ 152.093 NOTICE OF PUBLIC HEARING IN NEWSPAPER.

(A) Before holding the public hearing required in §152.092 notice of the hearing shall be given in the newspaper of general circulation in Owen County at least ten days before the date of the hearing. The notice shall set forth the time and place of the public hearing, the geographic area to which the proposal applies and a summary of the proposed amendment.

(B) The Plan Commission shall give notice of the hearing by publication under I.C. 5-3-1. The notice must state:

- (1) If the proposal contains or would add or amend any penalty or forfeiture provisions, the entire text of those penalty or forfeiture provisions;
- (2) The place where a copy of the proposal is on file for examination before the hearing;
- (3) That written objections to the proposal that are filed with the Secretary of the Plan Commission before the hearing will be considered;
- (4) The oral comments concerning the proposal will be considered; and
- (5) The hearing may be continued from time to time as may be found necessary.

(Ord. 2019-18, passed 9-16-2019)

§ 152.094 NOTICE TO PARTIES OF INTEREST.

Written notice of the hearing shall be mailed by the applicant, by registered mail, at least ten (10) days before the day of the public hearing, to each person who owns an interest in real estate adjoining the property involved in the petition including owners of real estate at corners, and across streets, alleys or easements, as well as others who may share a common boundary; all other person who, in the opinion of the applicant, have an interest in the outcome of the petition; and any other owners of real estate who did not join as an original petitioner or who did not file a waiver of notice of hearing prior to the day of public hearing. The failure to deliver the notification, as provided in this section, shall not invalidate any such amendment. The notice shall contain the same information as required of notices published in newspapers as specified in § 152.093.

(Ord. 2019-18, passed 9-16-2019)

§ 152.095 RECOMMENDATION BY PLAN COMMISSION.

Within ten business days after the Plan Commission determines its recommendation, the Commission shall transmit its recommendation to the Spencer Town Board. The Plan Commission may recommend that the amendment be granted as requested, or it may recommend a modification of the

amendment requested, or it may recommend that the amendment be denied, or it may send it to the Spencer Town Board with no recommendation.

(Ord. 2019-18, passed 9-16-2019)

§ 152.096 ACTION BY THE SPENCER TOWN BOARD

(A) The Spencer Town Board shall vote on a recommended amendment proposal from the Plan Commission within 90 days after the Plan Commission transmits its recommendation. The Spencer Town Board shall give notice under I.C. 5-14-1.5-5 of its intention to consider the proposal.

(B) If the proposal is to amend or partially repeal the text of the Zoning Ordinance, the following procedures shall be followed:

(1) If the Plan Commission submits a recommendation in favor of the amendment:

(a) The Spencer Town Board adopts the recommendation; it takes effect as other ordinances of the Spencer Town Board;

(b) The Spencer Town Board fails to act within 90 days, it takes effect as if it had been adopted 90 days after receipt from the Plan Commission; or

(c) The Spencer Town Board rejects the recommendation or amends the proposal; it shall be returned to the Plan Commission for its consideration. The Plan Commission has 45 days in which to consider the rejection or amendment and to report to the Board as follows.

(i.) If the Plan Commission approves the amendment or fails to act in 45 days, the proposal stands as passed as amended by the Spencer Town Board as of the date of the filing or at the end of the 45-day period.

(ii) If the Plan Commission disapproves of the rejection or amendment, the action of the Spencer Town Board stands only if confirmed by another vote of the Board within 45 days after the Plan Commission certifies its disapproval. If the Spencer Town Board fails to confirm its action, the ordinance takes effect as originally proposed.

(2) If the Plan Commission submits an unfavorable recommendation or no recommendation with the proposal to the Spencer Town Board:

(a) The Spencer Town Board adopts the proposal, it takes effect as other ordinances of the Spencer Town Board;

(b) The Spencer Town Board rejects the proposal or fails to act within 90 days, it is defeated; or

(c) The Spencer Town Board amends the proposal, it shall be returned to the Plan Commission for its consideration. The Plan Commission has 45 days in which to consider the amendment and report back to the Spencer Town Board as follows:

(i.) If the Plan Commission approves the amendment or fails to act in 45 days, the ordinance stands as passed by the Spencer Town Board as of the date of the filing or at the end of the 45-day period.

(ii.) If the Plan Commission disapproves the amendment, the action of the Spencer Town Board stands only if confirmed by another vote of the Board within 45 days after the Plan Commission certifies its disapproval. If the Board fails to confirm its action, the proposal is defeated.

(3) If the proposal is to change the official zoning map incorporated by reference in the Zoning Ordinance, the following procedures shall apply:

(a) If the Plan Commission provides a favorable recommendation:

(i) The Spencer Town Board adopts the proposal; it takes effect as other ordinances of the Board;

(ii.) The Spencer Town Board rejects the proposal, it is defeated; or

(iii.) The Spencer Town Board fails to act within 90 days, the proposal takes effect at the end of the 90-day period.

(b) If the Plan Commission provides an unfavorable or no recommendation:

(i.) The Spencer Town Board adopts the proposal; it takes effect as other ordinances of the Spencer Town Board;

(ii.) The Spencer Town Board rejects the proposal, it is defeated; or

(iii.) The Spencer Town Board fails to act within 90 days, it is defeated.

(4) Any proposal for a Zoning Map amendment that is defeated under the provisions of this section may not be resubmitted for a period of one year.

Statutory Reference: Indiana Code 36-7-4-600 et seq.

(Ord. 2019-18, passed 9-16-2019)

NON-CONFORMING USES

§ 152.100 CONTINUANCES OF USE.

(A) A non-conforming use in existence at the time of the enactment of this subchapter may be continued unless it is restricted in this subchapter.

(B) Repairs and alterations that are normal to any building, or maintenance, may be performed on non-conforming structures, if necessary, for public health, safety, or appearance.

(C) A non-conforming use may be changed to a conforming use but shall not be changed to another non-conforming use.

(Prior Code, Ch. 9, Art. IX, § 1) (Ord. 1987-2, passed 2-2-1987) (Ord. 2019-18, passed 9-16-2019)

§ 152.101 NON-CONFORMING USE CESSATION.

(A) If for a continuous period of 6 months, a non-conforming use has ceased, or is removed and has not been replaced, the building or land shall be used only for a conforming use thereafter.

(B) Mobile homes located in R-1 Residential Districts are a non-conforming use. Upon removal of a mobile home from any lot, mobile home park, or other location in R-1, it shall not be replaced without the written approval of the BZA.

(Prior Code, Ch. 9, Art. IX, § 2) (Ord. 1987-2, passed 2-2-1987)(Ord. 2019-18, passed 9-16-2019)

§ 152.102 ERECTION AND RE-ERECTION OF STRUCTURE.

(A) Where a building exists that is a non-conforming use, no additional building devoted to a non-conforming use can be erected on that premises. A building that is located upon any such premises and that has been damaged by fire or other causes to the extent of more than fifty percent (50%) of its appraised replacement valuation may be reconstructed subject to the following restrictions.

(1) The reconstruction must be performed by the person(s) who owned the building when the damage occurred.

(2) The reconstruction must take place within six months of when the damage occurred, 60 days for a mobile home.

(3) The structure to be reconstructed must be built to the same square footage as the previous building.

(Ord. 2019-18, passed 9-16-2019)

§ 152.103 ZONING DISTRICT CHANGES; GRANDFATHER CLAUSE

If the boundaries of a Zoning District are changed and it transfers an area from one district to another district with a different zoning classification, the provisions of section §152.100 Continuance of Use and §152.101 Non-conforming Use Cessation shall apply.

(Prior Code, Ch. 9, Art. IX, § 3) (Ord. 1987-2, passed 2-2-1987) (Ord. 2019-18, passed 9-16-2019)

APPEALS FROM ADMINISTRATIVE DECISIONS

§ 152.110 ADMINISTRATIVE APPEAL

(A) The Board of Zoning Appeals shall have the power to consider administrative appeals from any order, requirement, decision, grant or refusal made by the Planning Administrator.

(Prior Code, Ch. 9, Art. VIII, § 6 & §7) (Ord. 1987-2, passed 2-2-1987) (Ord. 2019-18, passed 9-16-2019)(Ord. 2019-18, passed 9-16-2019)

§ 152.111 GROUNDS OF APPEAL; HEARINGS; RECORDS; DECISIONS.

(A) (1) An appeal filed with the BZA shall specify the grounds of the appeal and be filed by the rules prescribed by the BZA.

(2) An appeal filed under this section must be filed within 30 days of the final decision.

(3) Upon request of the BZA, all documents and/or data concerning an appeal are to given to the BZA (certified copies are acceptable).

(B) Upon appeal, the BZA must hold a public hearing and provide due notice to all interested parties at least ten (10) days prior to the date set for the hearing.

(1) The petitioner for an appeal may be required to pay for the cost of public notice and due notice to interested parties.

(2) At the hearing, each party may appear in person, by agent or by attorney.

(3) Any person may appear to present relevant evidence.

(C) The BZA may reverse, affirm or modify the order, requirement, decision or determination made by other Boards or Commissions. For this purpose, the BZA has all of the powers of the official, Board, Commission or body from which the appeal was taken.

(C) (1) The BZA shall make a decision within five (5) days of the public hearing referenced in (C) above. Such finding shall be in writing and be filed in the same manner as all other decisions of the

BZA.

(Prior Code, Ch. 9, Art. VIII, § 10 and § 11) (Ord. 1987-2, passed 2-2-1987) (Ord. 2019-18, passed 9-16-2019)

MOBILE HOMES

§ 152.120 MOBILE HOME PARKS DEFINITION.

(A) For the purpose of this subchapter, the following definition shall apply unless the context indicates or requires a different meaning.

(B) A **MOBILE HOME PARK** shall be defined as an area of land on which there is located more than one (1) mobile home for the purpose of being occupied with or without cost to the owner or occupant.

(Prior Code, Ch. 9, Art. VI, § 1) (Ord.1987-2, passed 2-2-1987) (Ord. 2019-18, passed 9-16-2019)

§ 152.121 LOCATION CRITERIA.

(A) There shall be no more than one (1) mobile home on any lot. The placement of the mobile home must comply with all set back ordinances of the Town of Spencer.

(B) Each mobile home, including any expanded portions, shall be at least 20 feet from every other mobile home in the park.

(C) Each mobile home shall be enclosed around the bottom with at least 1 access opening large enough to permit inspection of water and sewer connections. The enclosure material shall be of a non-combustible material, except that wood may be used for the framework of the enclosure.

(D) Each mobile home lot shall abut directly on a road, driveway, or parking lot. There shall be no dead-end streets for vehicle traffic in a mobile home park.

(E) Hard surface area of sufficient size shall be provided for each mobile home as a base for steps to the mobile home, and each mobile home shall have a hard-surface walk to connect the steps with a street, road, driveway or parking lot.

(F) There shall be a house number clearly visible on each mobile home that conforms to the United States Postal Service requirements.

(G) A mobile home cannot be, or remain occupied, if all utility services are not available or are not connected.

(Prior Code, Ch. 9, Art. VI, § 2) (Ord.1987-2, passed 2-2-1987; Am. Ord. 1997-12, passed 10-20-1997)

(Ord. 2019-18, passed 9-16-2019)

§ 152.122 APPROVAL FOR MOBILE HOME PARKS.

Any person desiring to build a new mobile home park or change or alter a mobile home park, must submit a written request, together with a plan, that meets the criteria of this subchapter to the Advisory Plan Commission. Each plan shall include a detailed drawing of the location of the lot or lots by number and the exact locations of property lines, streets, and sidewalks of each proposed mobile home to be placed in the mobile home park.

(Prior Code, Ch. 9, Art. IV, § 3) (Ord. 1987-2, passed 2-2-1987) (Ord. 2019-18, passed 9-16-2019)

OFF-STREET PARKING AND LOADING

§ 152.130 SCOPE.

In all Zoning Districts, off-street parking facilities for the storage and parking of self-propelled motor vehicles for the use of occupants, employees and patrons of the buildings hereafter erected, altered so as to require a building permit or extended after the effective date of this subchapter, shall be provided as herein prescribed. The space shall be maintained and shall not be encroached upon so long as the main building or structure remains, unless an equivalent number of the spaces are provided elsewhere in conformance with this subchapter. Any deviation from this subchapter may be granted by the Board of Zoning Appeals after the filing of a petition and notice and hearing. The Board of Zoning Appeals must enter specific findings prior to granting such a request finding the following herein.

(Prior Code, Ch. 24, § 24.1) (Ord. 1996-11, passed 11-4-1996) (Ord. 2019-18, passed 9-16-2019)

§ 152.131 PARKING AREA.

For the purpose of this subchapter, the average parking area consisting of a parking space and adjacent maneuvering aisle space, shall be deemed to be 300 square feet.

(Prior Code, Ch. 24, § 24.2) (Ord. 1996-11, passed 11-4-1996) (Ord. 2019-18, passed 9-16-2019)

§ 152.132 PARKING SPACE.

Each parking space shall contain a minimum of 180 square feet, and shall have a direct means of ingress and egress from a public right-of-way.

(Prior Code, Ch. 24, § 24.3) (Ord. 1996-11, passed 11-4-1996) (Ord. 2019-18, passed 9-16-2019)

§ 152.133 LOCATION OF PARKING.

The off-street parking required by this subchapter shall be provided in accordance with the following requirements:

(A) *One and two family dwellings.* The off-street parking facilities required for one and two family dwellings shall be located on the same lot or plot of ground as the building they are intended to serve. Parking is limited to the driveway only and 1 additional parking lane may be allowed with approval. Parking spaces may not be located in the front yard.

(B) *Multiple family dwellings.* The off-street parking facilities for multi-family dwellings shall be located on the same lot or plot of ground as the dwellings they are intended to serve, and shall consist of a parking lot as defined elsewhere in this subchapter. In no event shall any uncovered parking space in a multi-family district be located nearer than 10 feet to any main building. Parking spaces may not be located in the front yard except as provided in § 152.130 (C)(2) herein under.

(C) *Mobile home parks.* Off-street parking required may be located on each site or in parking lots conveniently located and readily accessible to each site. Each parking space must meet the minimum requirements. In no event shall any uncovered parking space in a mobile home park be located nearer than 10 feet to any main building.

(D) *Other land uses.* The off-street parking, other than that addressed under divisions (A) through (C) above required, may be located on each site or in parking lots conveniently located and readily accessible to each site. Each parking space must meet the minimum area requirements and meet any other engineering standards as deemed necessary by the Planning Commission.

(Prior Code, Ch. 24, § 24.4) (Ord. 1996-11, passed 11-4-1996) (Ord. 2019-18, passed 9-16-2019)

§ 152.134 PARKING LOT REQUIREMENTS.

All parking facilities, including driveways and maneuvering areas, required for uses mentioned in § 152.132 of this subchapter (except for single family dwellings with a driveway with a slope of two percent (2%) or less) shall be hard-surfaced with a pavement having an asphalt or concrete binder, shall be two percent (2%) or less) shall be hard-surfaced with a pavement having an asphalt or concrete binder, shall be graded and drained so as to dispose of surface water which might accumulate within or upon the area, and shall be completely constructed prior to a certificate of occupancy being issued. No additional surface water from the parking area shall be permitted to drain onto adjoining property unless a watershed easement has been obtained. The BZA may grant an extension for the placing of the hard surface for up to one (1) year due to weather and settling. However, the petitioner must post an adequate bond or other assurances for this extension to be granted.

(Prior Code, Ch. 24, § 24.5) (Ord. 1996-11, passed 11-4-1996) (Ord. 2019-18, passed 9-16-2019)

§ 152.135 PARKING LOT PLANS.

(A) The construction of any parking lot shall be in accordance with the requirements of this subchapter and the construction shall be completed and approved by the Building Commissioner before actual use of the property as a parking lot and before a certificate of occupancy is issued.

(B) Plans for the development of any parking lot must be submitted to the Building Commissioner, prepared at a scale of not less than 1 inch equals 50 feet and indicating existing and proposed grades, drainage, pipe sizes, parking of all dimensions, type of curbing, drive and aisle dimensions, lighting, adjacent main buildings, sidewalks, landscaping, surfacing and base materials to be used and the layout of the proposed parking lot. All parking lots exceeding ten percent (10%) coverage of any lot shall require a building permit.

(C) The plans are to be prepared in a presentable form by person or persons competent in the work and shall reflect conformance with the following provisions:

(1) All illumination for or on all the parking lots shall be deflected away from adjacent residential areas and roadways and shall be installed in such a manner as to allow the reduction of the amount of light on other than normal parking hours each day. The source of illumination in all parking lots abutting a residential area shall not be more than 20 feet above the parking lot surface.

(2) The required front yard setback area in a multi-family residential area shall be maintained as a green area. In cases of difficult topography, the Building Commissioner may allow the parking lots to extend into the front setback area provided that the average of front setback areas totals at least 30 feet from any public street right-of-way in no case shall the parking lot be any closer than 10 feet to a public street right-of-way.

(3) When a parking lot or area for a non-residential use is situated in a parcel that adjoins a residential district or use, the respective side and rear yard setback in which the parking is located shall be a minimum of 45 feet of which 20 feet nearest the respective property line is developed as a greenbelt; extending from the front yard setback to the rear yard setback in the case of the side yard parking adjoining residential use, or the width of the rear of the lot in the case of rear yard parking adjoining the residential use.

(4) Adequate ingress and egress to the parking lot, by means of limited and clearly defined drive or drives, shall be provided for all vehicles.

(5) Wheel stops shall be provided and so located as to prevent any vehicle from projecting over the lot or setback lines.

(6) Plans for the layout of off-street parking facilities shall be in accordance with the following minimum regulations: The minimum parking space dimensions for a layout not provided for in the following regulations shall be 9 feet in width, 20 feet in length and 180 square feet in area.

(Prior Code, Ch. 24, § 24.6) (Ord. 1996-11, passed 11-4-1996) (Ord. 2019-18, passed 9-16-2019)

§ 152.136 PARKING RESTRICTIONS.

Off-street and on-street parking of vehicles shall be further restricted by the following requirements: After the effective date of this subchapter, it shall be unlawful for the owner, tenant or lessee of any lot, parcel or tract of land in a Residential District or in the residential area of any other district, to permit or allow the open storage or parking, either day or night, thereon of trucks, semi trucks and trailers, mobile homes, tractors, bulldozers, earth carriers, drag lines, cranes, steam shovels and/or any other equipment or machinery. It is provided, however, that the owner, tenant or lessee of a farm may openly store the machinery and equipment used on his or her farm; and it is further provided that equipment necessary to be parked overnight on a lot, parcel or tract of land during construction work thereon shall be exempted from this restriction. Violations shall be subject to penalties of fines, imprisonment or both. This shall not apply to pickup or panel trucks.

(Prior Code, Ch. 24, § 24.7) (Ord. 1996-11, passed 11-4-1996) (Ord. 2019-18, passed 9-16-2019)

§ 152.137 TABLE OF OFF-STREET PARKING REQUIREMENTS.

The amount of required off-street parking spaces by type of use shall be determined in accordance with the following tables and with the exception of Residential, must comply with the American Disabilities Act (ADA) guidelines:

<i>Use</i>	<i>Minimum Required Number of Parking Spaces Per Each Unit of Measure As Follows</i>
Residential	
One and 2 family	2 per each dwelling unit

<i>Use</i>	<i>Minimum Required Number of Parking Spaces Per Each Unit of Measure As Follows</i>
Multiple family and attached single family	2 per each dwelling unit
Mobile home parks	2 per each mobile home unit
Boarding house	1 per each sleeping room

<i>Use</i>	<i>Minimum Required Number of Parking Spaces Per Each Unit of Measure As Follows</i>
Institutional	
Hospitals	1 per each 2 beds plus per staff doctor, plus per 2 employees
Libraries and museums	1 per each 400 square feet of UFA
Private clubs and lodges	1 per each 3 individual members allowed within the maximum occupancy load as established by local, county, state, fire, health or building codes
Church	1 per 4 members/seats
Private tennis club, swim club, golf club, or other similar use	1 per each 2 member families or individuals, plus amount required for accessory uses
Single screen/stage theaters, auditoriums and assembly halls	2 per each 5 seats based on the maximum seating capacity in the main place of assembly therein, plus per each 2 employees
Multi-screen/stage theaters	3 per each 10 seats based on the maximum seating capacity in the main place of assembly therein
Sanitariums, convalescent homes	1 per each 4 beds

<i>Use</i>	<i>Minimum Required Number of Parking Spaces Per Each Unit of Measure As Follows</i>
Homes for the aged, nursing homes	1 per each staff doctor
Children's homes	1 per each 2 employees
Stadiums and sports arenas	1 per each 4 seats or 8 feet of bench

<i>Use</i>	<i>Minimum Required Number of Parking Spaces Per Each Unit of Measure As Follows</i>
Business and Commercial	
Animal hospitals and kennels	1 per each 400 square feet UFA, plus 1 per each 2 employees
Auto salesrooms, wholesale stores, machinery sales and other similar uses	1 per each 300 square feet UFA plus 1 per each employee
Auto garages, auto repair shops, collision or bump shops, or other similar uses	1 per each 800 square feet plus 1 per each 2 employees computed on the basis of the maximum number of employees on duty at any 1 time, plus 2 per each stall or service area
Vehicle service stations, filling stations	2 per each service stall, plus 1 per each employee, plus 1 per each service area
Vehicle wash establishments	1 per each employee, plus sufficient parking to enable 1 vehicle per workstation
Barber shops	2 per each barber
Beauty shops	3 per each beauty operator

<i>Use</i>	<i>Minimum Required Number of Parking Spaces Per Each Unit of Measure As Follows</i>
Bowling alleys	6 per bowling lane plus amount required for accessory uses
Dance halls, exhibition halls, pool halls, billiard parlors, and assembly halls without fixed seats	1 per each 2 persons allowed within the maximum occupancy load as established by local county or state fire, health or building codes
(OR)	1 per each 100 square feet UFA, whichever is greater
Daycare centers	1 per 2 employees, plus 1 per 5 children
Drive-in restaurants or similar drive-in uses for the sale of food, beverages or refreshments	1 per each 50 square feet GFA, plus 1 per each 3 employees
Drive-in theater	1 per each outdoor speaker facility, plus 1 per each 3 employees
Furniture, appliances and household equipment, repair shops, hardware stores and other similar uses	1 per each 800 square feet of UA, plus 1 per each 2 employees
Laundromat, coin operated dry cleaning establishment	1 per each 2 washing and dry cleaning machines
Miniature or "Par 3" golf course	2 per each hole, plus 1 per each 2 employees
Mortuary establishments, funeral homes, undertaking parlors	1 per each 50 square feet of parlor area
Motels, hotels, tourist homes	1 per each guest bedroom, plus 1 per each employee, plus amount required for accessory uses

<i>Use</i>	<i>Minimum Required Number of Parking Spaces Per Each Unit of Measure As Follows</i>
Open air business (not otherwise provided for herein)	1 per each 800 square feet of lot area used for the business
Personal service establishment (not otherwise provided for herein)	1 per each 300 square feet of UFA, plus 1 per each 2 employees
Restaurants and other establishments (other than drive-in restaurants) in which is conducted the sale and consumption on the premises of food, beverages or refreshments	1 per each 3 persons allowed within the maximum occupancy load as established by local, state or county fire health or building codes, plus 1 per each 3 employees
(OR)	1 per each 700 square feet UFA, plus 1 per each 3 employees, whichever is greater
Retail stores, except as otherwise specified herein	1 per each 200 square feet of GFA, plus 1 per each 3 employees
Roadside stands	5 for each establishment

<i>Use</i>	<i>Minimum Required Number of Parking Spaces Per Each Unit of Measure As Follows</i>
Offices	
Banks (other than drive-in banks), post offices	1 per each 200 square feet UFA, plus 1 per each employee
Business and professional offices	1 per each 300 square feet GFA
Drive-in bank	4 standing spaces per each outside teller window, plus normal requirements for banks

<i>Use</i>	<i>Minimum Required Number of Parking Spaces Per Each Unit of Measure As Follows</i>
Medical clinic and dental clinic	4 per each staff or visiting doctor, plus 1 per each employee

<i>Use</i>	<i>Minimum Required Number of Parking Spaces Per Each Unit Of Measure As Follows</i>
Industrial	
Industrial or manufacturing establishments, research establishments	1 per each 1-1/2 employees computed on the basis of the greatest number of persons employed at any 1 time, day or night
(OR)	2 per each 2,000 square feet GFA, whichever is greater
Warehouses and storage buildings	1 per each 2 employees computed on the basis of the greatest number of persons employed at any 1 time, day or night
(OR)	1 per each 2,000 square feet GFA, whichever is greater

(Prior Code, Ch. 24, § 24.8) (Ord. 1996-11, passed 11-4-1996) (Ord. 2019-18, passed 9-16-2019)

§ 152.138 MISCELLANEOUS OFF-STREET PARKING PROVISIONS.

(A) (1) *Existing off-street parking at effective date of subchapter.* Off-street parking existing at the effective date of this subchapter which serves an existing building or use, shall not be reduced in size to less than that required under the terms of this subchapter. This section excludes metered parking areas.

(2) *Fractional requirements.* When units or measurements determining number of required parking spaces result in requirement of a fractional space, any fraction up to and including 1/2 may be disregarded and fractions over 1/2 shall require one (1) parking space.

(3) *Other requirements.* Requirements for a use not mentioned shall be the same for that use which is most similar to the use not listed.

(4) *Additional parking.* Additional parking shall be provided and maintained in proper ratio to any increase in floor area or building use capacity.

(B) For the purposes of determining off-street parking and loading requirements, the following provisions shall apply:

(1) In mercantile establishments, usable floor area (UFA) shall mean the floor area used for service to the public. It shall not include floor area used for storage or the processing and packaging of merchandise where it is carried on in a room in which service to the public is not involved.

(2) In hospitals, bassinets shall not be counted as beds.

(3) Where benches, pews or other similar seating facilities are used as seats, every 24 inches of the seating facilities shall be counted as 1 seat.

(4) In the case of mixed uses in the same building, the total requirements for off-street parking and loading shall be the sum of the requirements for the different individual uses computed separately. In the event that the uses are non-concurrent, the requirement shall be the greater of the individual, non-concurrent use requirements.

(5) Joint or collective provision of off-street parking for buildings or uses of two (2) or more properties shall not be less than the sum of the requirements for the participating individual uses computed separately.

(Prior Code, Ch. 24, § 24.9) (Ord. 1996-11, passed 11-4-1996) (Ord. 2019-18, passed 9-16-2019)

§ 152.139 OFF-STREET LOADING REQUIREMENTS.

(A) On the same premises with every building or part thereof erected and occupied for manufacturing, storage, warehouse, goods display, department store, wholesale, market, hotel, hospital, laundry, dry cleaning, or other similar use involving the receipt or distribution of vehicles, material or merchandise, there shall be provided and maintained on the lot adequate space for standing, loading or unloading services in order to avoid undue interference with street or parking areas.

(B) The loading and unloading space or spaces, unless completely and adequately provided for within a building, shall be a minimum area of 10 feet by 25 feet with 14 foot height clearance, and shall be provided according to the following schedule:

<i>Gross Floor Area In Square Feet</i>	<i>Loading And Unloading Spaces Required In Terms of Square Feet of Gross Floor Area</i>
0-2,000	None
2,000-20,000	1 space
20,000-100,000	1 space plus 1 space for each 20,000 square feet in excess of 20,000
100,000-500,000	5 spaces plus 1 space for each 40,000 square feet in excess of 100,000 square feet
Over 500,000	15 spaces plus 1 space for each 80,000 square feet in excess of 500,000 square feet

(Prior Code, Ch. 24, § 24.10) (Ord. 1996-11, passed 11-4-1996) (Ord. 2019-18, passed 9-16-2019)

§ 152.140 PARKING AND MANEUVERING LANE STANDARDS.

Parking and maneuvering areas must be designed in accordance with the following schedule:

<i>Parking Pattern (in degrees)</i>	<i>Maneuvering Lane Width</i>		<i>Parking (1) Space Width</i>	<i>Parking (2) Space Width</i>	<i>Total Width of 2 Tiers of Spaces Plus Maneuvering Lane</i>	
	<i>1-way</i>	<i>2-way</i>			<i>1-way</i>	<i>2-way</i>
0	11 feet	18 feet	9 feet	25 feet	28 feet	35 feet
30-50	12 feet	20 feet	9 feet	21 feet	54 feet	62 feet
54-74	13 feet	24 feet	9 feet	21 feet	55 feet	66 feet

<i>Parking Pattern (in degrees)</i>	<i>Maneuvering Lane Width</i>		<i>Parking (1) Space Width</i>	<i>Parking (2) Space Width</i>	<i>Total Width of 2 Tiers of Spaces Plus Maneuvering Lane</i>	
	<i>1-way</i>	<i>2-way</i>			<i>1-way</i>	<i>2-way</i>
75-90	15 feet	24 feet	9 feet	18 feet	51 feet	60 feet
(1) Measured perpendicular to the longitudinal space centerline						
(2) Measured along the longitudinal space centerline						

(Prior Code, Ch. 24, § 24.11) (Ord. 1996-11, passed 11-4-1996) (Ord. 2019-18, passed 9-16-2019)

PLANNED UNIT DEVELOPMENT

§ 152.150 INTENT AND PURPOSE

The basic intent of these PUD regulations is to replace the usual development approval process, involving rigid use and bulk specifications, with more flexible procedures involving a PUD plan submitted by a developer and approved by the Town. These regulations recognize that, while the standard zoning functions (use and bulk) and the standard subdivision functions (platting and design) are appropriate for the regulation of land uses in areas or neighborhoods of the community that are already substantially developed, these controls represent a type of pre-regulation and regulatory rigidity which would frustrate the application of the PUD concept. Thus, where PUD techniques are permitted, the normal use and dimensional specifications contained elsewhere in this Ordinance and applicable to the respective zoning districts are replaced by an approval process in which the approved plan becomes the basis for continuing land use controls. Planned Unit Developments do not necessarily correspond in minimum lot size, type of dwelling unit, density, lot coverage, or required open space, to any other residential district requirements. The purpose of this Section is to improve and protect the public health, safety and welfare by pursuing the following objectives:

- (1) To ensure that future development is in accordance with the Comprehensive Plan;
- (2) To encourage innovations in land development and redevelopment;

(3) To foster the safe, efficient, and economic use of the land, transportation, public facilities, and services;

(4) To facilitate the provision of adequate public services such as transportation, water, sewer, storm drainage, electricity, and public parks;

(5) To avoid the inappropriate development of lands and provide for adequate drainage and reduction of flood damage;

(6) To encourage patterns of land use which decrease trip length of automobile travel and encourage trip consolidation;

(7) To minimize adverse environmental impacts of development;

(8) To improve the design, quality, and character of new development, and encourage the provision of open space within such developments;

(9) To foster a more rational pattern of relationship between residential, commercial and industrial uses;

(10) To protect existing neighborhoods from harmful encroachment by intrusive or disruptive development.

(Ord. 2019-18, passed 9-16-2019)

§ 152.151 APPLICABILITY AND OWNERSHIP

The PUD zoning district may be applicable to any area where the applicant can demonstrate that this proposal will meet the objectives of this Ordinance. Any proposed major subdivision where proposed development standards such as lot size, lot width, density, and setbacks do not meet the underlying zoning district requirements must follow the PUD process indicated herein. The entire tract of land involved in a PUD application must be under the control of the applicant, which may be a single person, entity, corporation, or a group of individuals, entities, or corporations. An application must be signed by the owner or owners of the land included in the tract. In the case of multiple ownership, the approved plan shall be binding on all owners.

(Ord. 2019-18, passed 9-16-2019)

§ 152.152 INCLUSION OF ACREAGE REMAINDER

If contiguous land owned by the applicant(s) of a proposed PUD is significantly less than the minimum amount of acreage required for a PUD, and said land would, in the Commission's opinion, be

rendered undevelopable by approval of the proposed PUD, the Commission may require the contiguous land to be included in the proposed PUD.

(Ord. 2019-18, passed 9-16-2019)

§ 152.153 PERMITTED USES

Residential uses may be of a variety of types in order to promote development of a balanced community. Commercial and other non-residential uses may be included in a PUD, subject to approval by the Commission. Such uses, their locations, and commercial area designs, shall be compatible with residential uses. Industrial uses are prohibited in a PUD where residential uses are proposed. The classification of industrial uses shall be as set forth in the I-1 and I-2 provisions of this Ordinance.

(Ord. 2019-18, passed 9-16-2019)

§ 152.154 LAND USE INTENSITY AND DEVELOPMENT GUIDELINES

The following are general guidelines for development within a proposed Planned Unit Development; however, the recommendation of the Plan Commission and the decision by the Spencer Town Board are not constrained by these guidelines. The Plan Commission and the Spencer Town Board may recommend approval/approve a Planned Unit Development that is inconsistent with these guidelines and may recommend denial/deny a Planned Unit Development that is consistent with these requirements.

(A) Residential Densities

(1) Overall – The maximum residential density for the overall project should be no more than twenty-five percent (25%) greater than the density allowed in the former zoning district, computed by comparing the total number of dwelling units to the gross land area of the project.

(2) Sections – The maximum residential density for any particular section should be no more than fifteen (15) units per acre, computed by comparing the number of dwelling units within a particular section to the gross land area of that particular section.

(B) Land Use Ratios

(1) Commercial – Commercial uses may occupy up to a maximum of ten (10) percent of the gross land area.

(C) Industrial – Industrial uses may not be permitted in a PUD where residential uses are proposed.

(D) Recreation and open space – There should be at least twenty percent (20%) of the gross land area in a PUD that provides for common open space. Street rights-of-way, parking areas, slopes exceeding fifteen percent (15%), floodways, and structures for habitation should not be included in the open space area calculations. No more than forty percent (40%) of this open space should be covered by water. Open space features considered eligible for inclusion in the required twenty percent may include the following:

(E) Agricultural uses, including horticulture, wholesale nurseries, the raising of crops, and buildings related to the same; neighborhood open spaces such as village greens, commons, picnic areas, community gardens, trails, and similar low-impact passive recreational uses.

(F) Active non-commercial recreation areas, such as playing fields, playgrounds, courts, and bikeways, provided such areas do not consume more than half of the minimum required greenway land or five acres, whichever is less. Playing fields, playgrounds, and courts may not be located within one hundred fifty (150) feet of abutting properties. Parking facilities for the same may also be permitted, and may generally be gravel-surfaced, unlighted, and properly drained; provide safe ingress and egress; and contain no more than ten parking spaces.

(G) Golf courses may constitute up to half of the minimum required greenway land, but shall not include driving ranges or miniature golf. Parking areas and any associated structures may not be included within the percentage of required minimum greenway. Parking and access ways may be paved and lighted.

(H) Easements for drainage, access, sewer or water lines, or other public purposes. Street rights-of-way may traverse conservation areas but may not count toward the minimum required greenway land.

(I) Common Open Space

(1) Common property in a PUD is a parcel of land, together with any improvements thereon, the use and enjoyment of which are shared by owners and occupants. When common property exists, the ownership of such common property may be either public or private, and satisfactory arrangements shall be made for the improvement, operation, and maintenance of such common property and facilities, including private streets, drives, service and parking areas, and recreational and open space areas. The landowner or applicant shall provide for and establish an organization for the ownership and maintenance of any private common open space, and such organization shall not be dissolved nor shall it dispose of any common open space.

(J) Utilities and Streets

(1) All utilities, including communication and electrical systems, shall be placed underground within the limits of a PUD. Appurtenances to these systems may be expected. The design and designation of all streets, public or private, shall be subject to the approval of the Commission. Minimum pavement construction and dimension standards shall be as set forth in the Subdivision Control Ordinance.

(K) Covenants and Maintenance

(1) There shall be established covenants and other similar deed restrictions which provide for the control and maintenance of all common areas, recreation facilities, and open spaces. If any open space or recreation facility is to be used solely by the residents of the PUD, adequate provisions shall be made for assessments against the property within the project so that such facilities can be properly maintained and operated.

(L) Improvements

(1) The petitioner shall provide financial assurance for the satisfactory installation of all facilities in the form of bonds or such other assurances as are required in the normal procedures of platting pursuant to the provisions of the Subdivision Control Ordinance.

(Ord. 2019-18, passed 9-16-2019)

§ 152.155 PROCEDURE

(A) The authorization of a PUD shall require approval of a Sketch Plan, Preliminary Master Plan, and Final Master Plan, as stipulated in this Section.

(B) Prior to application for Sketch Plan review by the Planning Administrator, the applicant shall have conducted a neighborhood meeting to present the proposed PUD to those same nearby residents who will later be required to be informed of the necessary public hearings regarding the PUD. The notice shall take the form of first-class mail to surrounding property owners within six hundred (600) feet of the parcel, or two (2) property owners, whichever is greater. The applicant shall certify that notification of surrounding property owners has been accomplished as required. The applicant shall then present the notarized document, the list of property owners, and a copy of the mailed notice to the Planning Administrator upon application for sketch plan review. The purpose of such a neighborhood meeting before filing is to allow the applicant to address significant remonstrator issues before completion of major engineering design work, thereby possibly shortening the length of review while protecting area residents.

(Ord. 2019-18, passed 9-16-2019)

§ 152.155 PRELIMINARY PLAT AND PLAN REVIEW

(A) Upon application by the owners of the area involved in a PUD petition, a preliminary plat for the PUD shall be presented to Planning Administrator for placement on the agenda of the Plan Commission. Five (5) copies of a preliminary plat shall be submitted, drawn approximately to scale but not to the precision of a finished engineering drawing, showing the following:

- (1) The existing topographical features of the site;
- (2) General map of the watershed in which the project is located;
- (3) General outlines of the interior roadway system and all existing rights- of-way and easements, whether public or private;
- (4) Delineation of the various residential and non-residential uses, indicating for each area its general extent, size, and composition in terms of total number of dwelling units and approximate percentage allocation by dwelling unit type;
- (5) Calculation of the residential density in dwelling units per gross acre, including interior roadways;
- (6) The interior open space system;
- (7) Extent and frequency of flooding on portions of the site subject to flooding;
- (8) Principal ties to the community at large with respect to transportation, water supply, and sewage disposal;
- (9) General description of the availability of other community facilities such as schools, fire protection, and cultural facilities, if any, and how these facilities are affected by the proposal;
- (10) General statement of how common open space is to be owned and maintained;
- (11) If the development is to be staged, a general indication of how the staging is to proceed;
- (12) Proposed deed covenants, in general terms, proposed to be made part of the PUD.

(Ord. 2019-18, passed 9-16-2019)

§ 152.156 PRELIMINARY PLAT AND PLAN; FACTORS FOR CONSIDERATION AND RECOMMENDATION

(A) Plan Commission review of a Preliminary Master Plan shall include, but not be limited to, the following considerations:

- (1) Adequacy and arrangement of vehicular traffic areas and circulation, including intersections, road widths, channelization structures, signs and traffic controls;
- (2) Adequacy and arrangement of pedestrian traffic areas and circulation, separation of pedestrian from vehicular traffic and pedestrian convenience;
- (3) Location, arrangement, appearance and sufficiency of off-street parking and loading;
- (4) Location, placement, and size of buildings, lighting, and signs.
- (5) Type and arrangement of landscape features;
- (6) Adequacy, location and size of storm sewer and sanitary waste disposal facilities;
- (7) Adequacy of structures or roadways in areas with moderate to high susceptibility for flooding, ponding or erosion;
- (8) Possible adverse effects on property adjacent to the development.

(B) In its review, the Commission may consult with any local departments or officials, as well as with Federal and State agencies such as the Indiana State Board of Health and the Department of Natural Resources, among others.

(C) Within thirty (30) days of the review of the Preliminary Plat and Plan the Plan Commission shall forward its recommendation to the Applicant, in writing, detailing its recommendation and any desirable revisions

(D) If the Final Plat and Plan is recommended for denial, applicant may revise his application, plat and plan to remedy the reasons for the denial and request another meeting for consideration of the Preliminary Plat and Plan.

(Ord. 2019-18, passed 9-16-2019)

§ 152.157 FINAL PLAT AND PLAN; PROCEDURE AND APPLICATION

(A) After review of the preliminary plat, the applicant may apply for Final Plat approval. The final plat approval shall be submitted to the Plan Commission. The proposed plan and any supporting documents shall be filed with the Commission office at least ten (10) days in advance of the public hearing under §152.158 at which the plan is to be reviewed.

(B) The Final Plat shall incorporate any conditions imposed by the Plan Commission during review of the Preliminary Plat. Said plan shall also contain a statement of the good faith intent of the applicant to carry out the proposed development in accordance with the Final Plat and Plan.

(C) Three (3) copies of the Final Plat shall be filed. The plat shall be prepared by a licensed engineer, surveyor, architect, or landscape architect, at a scale of not more than one hundred (100) feet to the inch. The Final Plat shall be submitted on mylar. The plat, plan and supporting documents shall show the following:

- (1) Any and all items required under §152.155;
- (2) An area map showing the applicant's entire holding, that portion of the applicant's property under consideration, and all properties, subdivisions, streets and easements within six hundred (600) feet of the applicant's property;
- (3) A topographic map of the entire area showing contour intervals of not more than two (2) feet of elevation;
- (4) Name of project, name and address of applicant, and name, address and seal of professional preparer;
- (5) North point, scale and date;
- (6) Areas of the site subject to flooding, including delineation of the 100-year flood boundary;
- (7) Street layout and design, including all existing rights-of-way and easements, whether public or private;
- (8) A street numbering designation for each building;
- (9) Proposed site development densities and uses for the overall tract and within each phase;
- (10) Infrastructure improvements, including construction details, showing centerline elevations, pavement type, curbs, gutters, culverts, etc.;
- (11) A detailed landscaping plan for the site, including a plant list containing common and botanical names, sizes at the time of installation and maturity, and quantities of plant materials;
- (12) A sign and lighting plan, showing all permanent signs and sign easements, and site lighting and street fixtures;
- (13) Location of all existing and proposed improvements, including drains, ditches, culverts, retaining wall, and fences; location and description of method of sewage disposal and water supply; location and size of all signs (street name, traffic control, and permanent community signs); location and design of street and parking lighting; and the amount of building area proposed for non-residential uses, if any;
- (14) A plan for phasing the construction of the project. It is the intent of this section that the tempo and sequence of development in a PUD be such that land uses that provide only moderate school

revenues, yet require large municipal and school service costs are scheduled simultaneously with those that provide larger local revenues yet which are not as costly to service;

(15) Preliminary architectural plans for all primary buildings shall be submitted in sufficient detail to permit an understanding of the style of development, the design of the building, and the number, size, and type of dwelling units;

(16) A general landscaping plan for the site showing landscape intent, types of plant material to be provided, and intensity and scale of landscaping with site details, where appropriate, to fully explain the concept. The landscaping plan shall be provided at the same scale as the overall development plan; Restrictive covenants, if required or proposed;

(17) The application shall certify that a professional consultant is being utilized in the planning procedures. Said consultant shall be involved in the application procedures.

(Ord. 2019-18, passed 9-16-2019)

§ 152.158 PUBLIC HEARING BY PLAN COMMISSION

The Plan Commission shall schedule a public hearing after a petition is received. Notices shall be Published in accordance with Indiana Code 5-3-1 et seq. and §152.159.

(Ord. 2019-18, passed 9-16-2019)

§ 152.159 NOTICE OF PUBLIC HEARING IN NEWSPAPER.

(A) Before holding the public hearing required in §152.158 notice of the hearing shall be given in the newspaper of general circulation in Owen County at least ten days before the date of the hearing. The notice shall set forth the time and place of the public hearing, the geographic area to which the proposal applies and a summary of the proposed amendment.

(B) The Board of Zoning Appeals shall give notice of the hearing by publication under I.C. 5-3-1. The notice must state:

(1) If the proposal contains or would add or amend any penalty or forfeiture provisions, the entire text of those penalty or forfeiture provisions;

(2) The place where a copy of the proposal is on file for examination before the hearing;

(3) That written objections to the proposal that are filed with the Secretary of the Board of Zoning Appeals before the hearing will be considered;

(4) The oral comments concerning the proposal will be considered; and

(5) The hearing may be continued from time to time as may be found necessary.

(Ord. 2019-18, passed 9-16-2019)

§ 152.160 NOTICE TO PARTIES OF INTEREST.

Written notice of the hearing shall be mailed by the applicant, by registered mail, at least 10 days before the day of the public hearing, to each person who owns an interest in real estate adjoining the property involved in the petition including owners of real estate at corners, and across streets, alleys or easements, as well as others who may share a common boundary; all other person who, in the opinion of the applicant, have an interest in the outcome of the petition; and any other owners of real estate who did not join as an original petitioner or who did not file a waiver of notice of hearing prior to the day of public hearing. The failure to deliver the notification, as provided in this section, shall not invalidate any such amendment. The notice shall contain the same information as required of notices published in newspapers as specified in § 152.159.

(Ord. 2019-18, passed 9-16-2019)

§ 152.161 PLAN COMMISSION ACTION ON FINAL PLAT AND PLAN.

(A) Within one month of the close of the public hearing on the Final Plat and Plan Application, the Plan Commission shall forward a recommendation to the Spencer Town Board.

(B) The Plan Commission's action shall be in the form of a written statement and a copy shall be provided to the applicant.

(C) The failure of the Plan Commission to make a recommendation within thirty (30) days of the public hearing shall be considered a favorable recommendation and be forwarded the Spencer Town Board for review and final approval.

(D) If the Final Plat and Plan is recommended for denial, applicant may revise his application, plat and plan to remedy the reasons for the denial. Under this method, the Plan Commission must hold another public hearing and must provide the notices under §152.159 and §152.160.

(Ord. 2019-18, passed 9-16-2019)

§ 152.162 SPENCER TOWN BOARD ACTION ON FINAL PLAT AND PLAN.

The Spencer Town Board shall review the proposed Final Plat and Plan within thirty (30) days of the date of the Plan Commission recommendation. The Board may approve, approve with conditions, refer back to the Plan Commission, or deny the application. The Final Plat and Plan shall contain a

statement of approval by the Spencer Town Board and shall bear the same signatures. The Final Plat shall be recorded with the Owen County Recorder's Office.

(Ord. 2019-18, passed 9-16-2019)

FEES

§ 152.170 FEE SCHEDULE

(A) The Spencer Town Board shall, by ordinance or resolution, establish a schedule of fees, charges and expenses and a collection procedure for amendments, appeals, variances, conditional use permits, plan approvals and other matters pertaining to the administration and enforcement of this chapter requiring investigations, legal, advertising postage and other expenses. The schedule of fees shall be posted in the office of the Plan Commission and may be altered or amended only by the Spencer Town Board. Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on any application or appeal. All fees associated with this chapter are set forth below:

(1)	Administrative Appeal	\$100.00
(2)	Conditional Use	\$250.00
(3)	Planned Unit Development	
	i. Preliminary Plat and Plan	\$250.00
	ii. Final Plat and Plan	\$750.00
(4)	Variance	\$250.00
(5)	Rezone	\$250.00

PENALTIES

§ 152.999 PENALTY.

(A) *Violations are a common nuisance.* The erection, construction, enlargement, conversion, or moving of any building or structure; and the use of any land, premises or building which is continued, operated or maintained contrary to this chapter is a common nuisance and a violation of this chapter. The Town Attorney shall request injunction, abatement or any appropriate action at his or her disposal to prevent, enjoin, abate or remove violations.

(B) *Civil action against violators.* Civil suit against any violator of this chapter may be instituted by any property owner who may be especially damaged by violations of this chapter. The remedies

provided for may be cumulative and in addition to any other remedies prescribed by law.

(Ch. 9, Art. XII) (Ord. 1987-2, passed 2-2-1987) (Ord. 2019-18, passed 9-16-2019)

(C) *Failure to comply.* In addition to any other remedy or penalty provided elsewhere in this chapter, any person or entity who violates or refuses compliance, or resists enforcement of this chapter may be fined up to \$1,000 by a court of competent jurisdiction.

(D) *Violations.* Any person or entity who violates this chapter who is not slated to appear in court may be subject to a fine of \$500. Alleged violators may pay to the Clerk-Treasurer the sum required within 7 days of the violation. If this fine is not paid within 7 days, suit shall be instituted for and on behalf of the town by the Town Attorney to collect the costs, including reasonable attorney fees incurred by the town for collection of the account.

(Prior Code, Ch. 9, Art. XIII) (Ord. 1987-2, passed 2-2-1987; Am. Ord. 1992-4, passed 6-15-1992) (Ord. 2019-18, passed 9-16-2019)

CHAPTER 153: SUBDIVISION

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GENERAL PROVISIONS

§ 153.001 GENERAL REQUIREMENTS.

(A) The standards set forth in these regulations control the development of land within the jurisdiction of the town.

(1) The purpose of these regulations is to insure provision of adequate light, air, open spaces, drainage, streets and public utilities.

(2) The aim is to develop and maintain a healthy, attractive and efficiently built environment that enhances the quality of life and sustains the natural environment.

(B) (1) The Town of Spencer Comprehensive Plan adopted by the town has a vision of quality development efficiently planned with amenities to increase investment value.

(2) The subdivision regulations must implement the quality development policies found in the Comprehensive Plan.

(C) (1) New residential growth must develop within the context of the existing neighborhoods.

(2) This will add value both within the neighborhoods and to the town's regional area as well.

(D) (1) Zoning regulation must serve the general welfare of the entire community.

(2) Careful attention to process, public notice and record keeping is required.

(E) Technical as well as administrative early review of each case must be thorough and professional, with written minutes or reports submitted from each meeting.

(1) The idea is to take time on the front end of the process so that subdivision requirements are clear and the case is well prepared for each hearing.

(2) Adding certainty and efficiency, while gaining quality assurance, is the aim of this chapter.

(F) (1) Following state guidelines, the primary plat will be conducted as a public hearing.

(2) The secondary plat will be approved, subject to the petitioner strictly following the subdivision regulations and financially securing the cost of the infrastructure.

(G) Most smaller divisions of land will be approved at the same meeting for both primary and secondary plats.

(H) (1) As a subdivision is being built, a strict compliance with submitted plans and commitments will be mandated.

(2) A follow up by the Director of Planning Services will be required and a written report will be submitted to the Plan Commission every 6 months during the build out.

(Ord. passed - -, § 153.001)

§ 153.002 DEFINITIONS.

Except as otherwise defined in this chapter, the definitions and requirements set forth in the zoning ordinance shall apply throughout this chapter.

(Ord. passed - -, § 153.002)

§ 153.003 GENERAL PROVISIONS.

(A) All parties who have a financial interest in the subdivision and subsequent development must be on record as agreeing with the submission provisions in the application to the Plan Commission.

(B) When it is clearly in the town's interest that a parcel should not be developed through further subdivision, the Planning Commission may reject a primary plat. Reasons for property not to be further developed include:

- (1) Property subject to flooding;
- (2) Property underlined by significant caverns and karsts features;
- (3) Property that has marketable dimension limestone;
- (4) Property with archeological significance;
- (5) Property with endangered species habitat; and/or
- (6) Property that has accumulated environmental waste.

(C) Subdivisions must comply with the Town of Spencer Comprehensive Plan.

(D) Subdivision streets must generally comply with the provisions of the Comprehensive Plan.

(E) Subdivision block length maximum is 800 feet.

- (1) Maximum cul-de-sac length is 600 feet.
- (2) Size of all cul-de-sacs will be a 40 foot radius.

(F) Subdivisions must provide utility and drainage easements on the perimeter of the property at not less than 20 feet wide.

(G) Provisions for lot width and depth are to be no more than a 4:1 ratio.

(H) (1) Provision of green space, trails, pathways, park features and playgrounds are required to meet the basic needs of each subdivision.

(2) Encouragement to add extra amenities and features that facilitate the walkability for residents may be established by the Planning Commission, and may be used to determine a density bonus of units within the subdivision.

(I) Clustering or grouping of structures to both save on infrastructure investment and design with nature around a sensitive natural feature may be given a waiver from the strict application of the zoning code, as long as the new subdivision plat:

- (1) Conforms generally to the Comprehensive Plan; and
- (2) Furthers economic investment quality, health, safety and welfare of the overall community.

(J) A buffering plan to lessen the impact of different land uses may be required.

(1) The buffer may include fences, earthen berms, evergreens and/or shade trees.

(2) The design will be determined on a case-by-case basis, depending on the specific site situation.

(K) Healthy trees over a 30 inch diameter may be required to be saved and marked for conservation on the submitted site plan.

(1) Native shade trees are mandated to be planted at an average of every 50 feet in the front yard of each lot.

(2) Where possible and with the Spencer Town Council written consent, additional trees may line the streets in plots between the sidewalk and the curb.

(L) Each surveyor must follow standard professional practice and leave permanent monuments at appropriate locations.

(M) Only large lot subdivisions, each averaging 3 acres per lot with no lot less than 2 acres, may apply for a waiver of street width.

(N) Waivers from strict application of the zoning code may be requested at the time of site plan review and prior to the approval of the primary plat.

(1) The waiver may be requested for hardship related to a unique physical characteristic of the land to be developed.

(2) If an innovative or creative site plan design is submitted, a waiver may be requested, provided there is substantive research or expert opinion to support the proposed innovation.

(Ord. passed - -, § 153.003)

APPLICATION FOR SUBDIVISION APPROVAL

§ 153.020 PRE-APPLICATION FOR SUBDIVISION APPROVAL.

(A) Prior to the filing of a formal application for approval of a preliminary plat, the petitioner shall submit to the Director of Planning Services the plans and data that outline generally the scope and intent of the proposed subdivision project.

(B) The pre-application plans and data shall include the following (a freehand sketch is acceptable):

(1) Present use and configuration of the land, including existing land uses, improvements, easements, rights-of-way, available utilities, contamination or other hazards of the land, covenants, restrictions, topography and drainage patterns.

(2) Proposed use and configuration of the land, including lot sizes, dedications of public land, dedication of rights-of-way and easements, street and utility layouts, regrading plans and drainage improvements.

(3) Proposed development name.

(Ord. passed - -, § 153.010)

§ 153.021 DIRECTOR OF PLANNING SERVICES PRELIMINARY REVIEW.

(A) The pre-application process is intended to be a reasonably informal review of the proposal.

(B) The Director of Planning Services and petitioner will jointly review the proposal for compliance with the requirements of the Comprehensive Plan, zoning and subdivision regulations.

(C) The petitioner shall deliver the plan to the respective utility organizations and the town's utility for their review and comment.

(D) The Director of Planning Services will make recommendations to the petitioner concerning changes to the plan and the filing of a formal application for preliminary plat review by the Plan Commission.

(Ord. passed - -, § 153.011)

§ 153.022 FORMAL APPLICATION.

(A) A written application for preliminary plat approval shall be filed by the petitioner with the Director of Planning Services.

(B) The application shall be complete and shall include a copy of the proposed subdivision plan and preliminary plat.

(C) The petitioner is responsible for completing, mailing and filing notifications and legal advertisements in accordance with § 153.044.

(Ord. passed - -, § 153.012)

§ 153.023 FILING FEE.

(A) The filing fee associated with the submission of a subdivision plan and plat shall be in the sum of \$100.00 plus \$25.00 per lot and shall be paid by the petitioner.

(B) The filing fee shall be paid prior to scheduling a date for the public hearing.

(Ord. passed - -, § 153.013)(Am.Ord.2010-1, passed April 5, 2010)

§ 153.024 DIRECTOR OF PLANNING SERVICES FORMAL REVIEW.

(A) After receiving the formal application, the Director of Planning Services shall, within 30 days, review the proposal and make a determination concerning its conformance with the standards under this chapter.

(B) The result of the review shall be one of the following.

(1) If the Director of Planning Services determination is that the proposal does not conform to these regulations, then the application shall be returned to the petitioner for modification.

(a) However, with the concurrence of the Director of Planning Services, the petitioner may proceed with the application together with a request for any waiver by the Plan Commission; and

(b) The Director shall set a date for a public hearing within 30 days of the decision.

(2) If the Director of Planning Services determines that the proposal is in conformance with these regulations, then the Director shall set a date for a public hearing within 30 days of making the determination.

(Ord. passed - -, § 153.014)

PRELIMINARY PLAT AND PRIMARY APPROVAL

§ 153.040 PRELIMINARY PLAT APPROVAL.

(A) The Director of Planning Services shall consider the preliminary plat at a public hearing pursuant to I.C. 36-7-4-706.

(B) At the hearing, the Plan Commission may:

(1) Grant primary approval of the plat as presented;

(2) Grant primary approval of the plat contingent on changes or revisions deemed necessary and in the interests and needs of the community;

(3) Disapprove the plat;

(4) Continue the hearing to another specified date and time; or

(5) Table the request.

(C) The Plan Commission's primary approval shall constitute authorization to proceed with construction of the required improvements, and shall precede secondary approval of the plat.

(1) Primary approval shall not qualify a plat for recording with the County Recorder.

(2) Lots may not convey title until the final secondary plat is approved and signed
(Ord. passed - -, § 153.020)

§ 153.041 NOTIFICATION OF DECISION.

(A) The Director of Planning Services shall notify the petitioner of the Plan Commission's decision within 30 days.

(B) If the preliminary plat was disapproved, the notification shall include a copy of the plat with appropriate notations setting forth the reason(s) for disapproval, and specifying with particularity the aspects in which the proposed plat fails to conform to the requirements of this chapter.

(Ord. passed - -, § 153.021)

§ 153.042 EFFECTIVE TERM OF PRIMARY APPROVAL.

(A) Primary approval shall be effective for a maximum period of 18 months, except that, upon application by the petitioner, the Plan Commission may grant an additional 12 month extension.

(B) Once extensions have been exhausted the process must start over.

(Ord. passed - -, § 153.022)

§ 153.043 PRELIMINARY PLAT REQUIRED FORMAT.

(A) Two copies of the plat, Development Plan and supplementary data sheets shall be delivered to the Zoning Administrator for referral to the Plan Commission.

(B) (1) Paper copies of the plat and Development Plan are acceptable for primary approval.

(2) As a guide, the final plat should be submitted on 20 inch wide by 18 inch high Mylar (or equivalent).

(C) (1) The preferred scale is 100 feet to 1 inch.

(2) Other scales will be considered where the preferred scale compromises legibility.

(Ord. passed - -, § 153.023)

§ 153.044 PRELIMINARY PLAT REQUIRED INFORMATION.

The preliminary plat shall contain the following information.

(A) Name of the subdivision at the top of the plat.

(B) Scale of plat and north point.

(C) Boundary drawing as follows, based on accurate traverse:

- (1) Showing angular and lineal dimensions, radii, internal angles, central angles, points of curvature and tangency, lengths of tangents and lengths of arcs;
- (2) Showing true courses and distances to the nearest official monuments that shall accurately describe the location of the plat;
- (3) Showing township section lines accurately tied to the lines of the subdivision by distances and courses; and
- (4) Showing municipal corporation lines within and adjacent to the tract.

(D) Boundary description by section, township and range, together with the legal description.

(E) Exact location, dimensions and names, as applicable, of the following.

- (1) Existing and proposed rights-of-way, public ways and easements, labeled Public Right-of-Way, Public Way, Public Utility Easement, Public Drainage Easement or Public Utility and Drainage Easement, as appropriate.
- (2) All existing or proposed streets within and adjacent to the tract, with existing and proposed names.
 - (a) Names of proposed streets shall, where possible, conform to the names of corresponding streets that abut and are to be extended into the subdivision.
 - (b) Except for the extensions, no proposed name shall duplicate that of any other street in the town.
 - (c) Street names for streets within the town are subject to the approval of the Town Council.
- (3) Proposed parks and other open public spaces, and parcels of land to be dedicated or temporarily reserved for public use or set aside for use of the property owners in the subdivision.
- (4) Permanent buildings or structures.
- (5) In the case of a re-plat, all the descriptive lines of the original plat being vacated shall be shown by dotted lines in their proper position in relation to the new arrangement of the plat, the new plat being clearly shown in solid lines so as to avoid ambiguity or confusion.
- (6) Contours of the land as follows.
 - (a) Where slopes are less than 20%, show vertical intervals of 1 foot.
 - (b) Where slopes exceed 20%, show vertical intervals of 5 feet.
- (7) Where lands are identified as flood hazard areas, show:
 - (a) The elevation of the regulatory flood; and

- (b) The area subject to inundation by the regulatory flood.
 - (8) Layout and numbering of lots.
 - (9) Dimensions on all lots, including lines, arcs, curves and easements.
 - (10) Building setback lines with dimensions.
 - (F) The private restrictive covenants, if desired, for the plat.
 - (G) A notation shall be included stating that none of the terms of the plat, except the private restrictive covenants, shall be changed without the approval of the Plan Commission.
 - (H) The following certifications, names and signatures:
 - (1) Property owner(s) names and signatures, with the acknowledgment of a notary public.
 - (2) Petitioner(s) names and signatures, with the acknowledgment of a notary public, if other than the property owner(s).
 - (3) Signature, registration number and seal of the registered professional land surveyor preparing the plat.
 - (4) Certification of the President and Secretary of the Plan Commission.
 - (5) Certification of the Town Council President and the Clerk-Treasurer.
 - (6) Certification of the landowner and developer of any intent to dedicate public right-of-ways, easements or utilities to the Town.
 - (7) Certification of Acceptance by the Town Council of any dedications of public rights-of-ways, easements or utilities.
- (Ord 2023-01, 02/21/2023)

FINAL PLAT AND SECONDARY APPROVAL

§ 153.060 SECONDARY APPROVAL.

(A) After primary approval of the plat by the Director of Planning Services, the petitioner shall proceed to install the improvements required by the primary approval.

(B) When the required improvements have been installed and otherwise completed, inspected and accepted by the appropriate utilities and all terms and conditions of the primary approval have been satisfied, the plat or an approved phase thereof, may be granted secondary approval.

- (1) No notice or hearing is required for secondary approval.
- (2) The Planning and Zoning Administrator, under the authority given by the Plan Commission, has the authority to grant secondary approval, as long as the proposed plat submitted for

secondary approval is substantially in compliance with the preliminary plat approved by the Plan Commission.

(3) Secondary approval for minor subdivisions may be requested at the primary approval hearing.

(C) A plat may not be filed and recorded with the County Auditor unless the Plan Commission has granted secondary approval.

(Ord. passed - -, § 153.030)

§ 153.061 RECORDING OF APPROVED PLAT.

(A) Within 60 days after the secondary approval of a plat or a phase thereof, the petitioner shall have a fully-signed original of the plat recorded with the County Recorder, and shall deliver 1 copy of the recorded plat to the following agencies:

- (1) The town; and
- (2) The County Auditor.

(B) The petitioner shall be responsible for payment of all fees required for recording and copying of the plat.

(Ord. passed - -, § 153.031)

§ 153.062 FAILURE TO RECORD PLAT.

If the final plat is not filed and recorded within 60 days following secondary approval, it shall have no validity and shall not be recorded except by re-certification and re-approval of the Plan Commission.

(Ord. passed - -, § 153.032)

§ 153.063 PHASING OF CONSTRUCTION.

(A) Where it is in the interest of the petitioner to complete construction of the improvements required by the primary approval in phases rather than at once, the petitioner shall so state in writing to the Plan Commission, and deliver the request, together with maps and drawings showing the intended phasing of the project.

(B) The Plan Commission may, at its option, provide secondary approval to each phase as it is built, provided that at no time shall the phasing plan produce an unsafe condition or utility layout that is not in compliance with the requirements of Indiana law or this code.

(Ord. passed - -, § 153.033)

§ 153.064 SECONDARY APPROVAL PRIOR TO COMPLETION OF IMPROVEMENTS.

(A) Pursuant to I.C. 36-7-4-709, the Plan Commission may grant secondary approval of a plat prior to completion of the improvements required under the primary approval, provided that the petitioner files 1 or more security instruments with the Clerk-Treasurer, which shall be in an amount determined by the Director of Planning Services and approved by the Plan Commission, as sufficient to complete the required improvements and installations.

(B) Acceptable security instruments include:

- (1) A subdivision or performance bond;
- (2) A cash bond held in an escrow account;
- (3) A certificate of deposit held in the joint names of the petitioner and the town, or assigned to the town;
- (4) An irrevocable letter of credit issued to the town, with terms acceptable to the Town Council;
- (5) A bond secured with real estate in which the petitioner has marketable fee simple title.

(C) The security instrument that is accepted shall name or run to the Town Council for the estimated time of completion of the improvements, and shall include terms and conditions acceptable to the Board of Public Works and Safety, to ensure that the improvements shall be completed within the allotted time.

(D) Any terms providing for reductions in the face amount of an instrument during the course of installation of improvements shall include a requirement that the Town Council approve any and all reductions.

(Ord. passed - -, § 153.034)

§ 153.065 DETERMINATION OF COMPLIANCE WITH PRIMARY APPROVAL.

(A) The Director of Planning Services shall assist the Plan Commission in determining compliance with the requirements of the primary approval.

(B) In so assisting, the Director of Planning Services shall require a finding by all interested utilities or the County Commissioners, as appropriate, that all required public infrastructure has been installed in accordance with the primary approval.

(Ord. passed - -, § 153.035)

§ 153.066 EVIDENCE OF COMPLIANCE WITH PRIMARY APPROVAL.

(A) Satisfactory evidence that the improvements and installations required under a primary approval have been completed and are in accordance with the requirements of this chapter shall include, but not be limited to, all of the following:

- (1) Submission of satisfactory test results for all systems that require testing to meet design, local, state and/or federal requirements;
- (2) Submission of letters from all private utility agencies and organizations, and/or the town's utilities, stating that the installation of public utility lines and public works has been accomplished in full compliance with the plans and specifications of the preliminary plat and are, therefore, accepted for maintenance; and
- (3) The petitioner's submission to the Director of Planning Services of a signed statement that:
 - (a) The petitioner has performed a review and inspection of the required improvements;
 - (b) The petitioner has compared those improvements to the requirements of the preliminary plat approval; and
 - (c) All requirements under the preliminary plat approval have been satisfactorily completed.

(B) With the approval of the Town Council, the Director of Planning Services shall make a final determination concerning the acceptability of each piece of evidence as proof of satisfactory completion of the requirements of the primary approval.

(Ord. passed - -, § 153.036)

§ 153.067 FINAL PLAT REQUIRED FORMAT.

(A) The petitioner shall submit 4 Mylar (or equivalent) tracings of the proposed final plat for original signatures.

(B) The proposed final plat shall be formatted as follows:

- (1) As a guideline only, sheets should measure 20 inches in width and 18 inches in height;
- (2) Where the plat has been prepared using CAD software, a copy of the plat shall be delivered to the Plan Commission on computer disk; and
- (3) Scale shall be the same as that of the preliminary plat.

(Ord. passed - -, § 153.037)

§ 153.068 FINAL PLAT REQUIRED INFORMATION.

The information required for the preliminary plat shall also be provided on the final plat, together with any changes or additions required by the Plan Commission as conditions of primary approval.

(Ord. passed - -, § 153.038)

DEVELOPMENT PLAN

§ 153.085 APPLICABILITY.

Except as noted, the following standards apply to all Development Plans and subdivisions of land.

(Ord. passed - -, § 153.045)

§ 153.086 DEVELOPMENT STANDARDS.

In addition to the requirements under this chapter, each Development Plan for subdivision approval shall contain the requirements under Chapter 152.

(Ord. passed - -, § 153.046)

§ 153.087 SUBDIVISION AND DEVELOPMENT PLANS REQUIRED.

(A) Subdivision of land is permitted in all zoning districts within the planning and zoning jurisdiction of the town.

(B) Subdivision and Development Plans, and subdivision plats, shall be required for all subdivisions of land, except exempt subdivisions of land, in all zoning districts within the planning and zoning jurisdiction of the town.

(Ord. passed - -, § 153.047)

§ 153.088 CERTIFICATION OF DESIGN.

The design of the preliminary plat and secondary or final plat for a subdivision and each Development Plan, shall be certified by a registered professional land surveyor or engineer licensed by the State of Indiana.

(Ord. passed - -, § 153.048)

§ 153.089 DEVELOPMENT AND SUBDIVISION PLAN APPROVAL.

(A) The Plan Commission shall approve the Development Plan and site plan for a subdivision of land that requires its approval.

(B) It is hereby required that no plat or subdivision of any lot, or any part thereof, within the town's territorial jurisdiction shall be entitled to be recorded in the county or have any validity until it has been approved in accordance with the criteria of this code.

(Ord. passed - -, § 153.049)

§ 153.090 EXEMPT SUBDIVISIONS OF LAND.

The following subdivisions of land shall be exempt from the requirements of this chapter:

(A) The division of a lot into more than 1 lot as a part of the settlement of an estate by a court of law.

(B) A division of land for a unit of government to acquire or improve a right-of-way.

(C) An adjustment of lot lines between existing adjoining lots that shall not reduce the area, frontage, width, depth or building setback lines on each lot below the minimum standards in this code, and does not change the number of lots.

(D) A division of land into cemetery plots for public or private burial.

(Ord. passed - -, § 153.050)

§ 153.091 DEVELOPMENT PLAN STANDARDS.

(A) Each Development Plan and site plan shall incorporate improvements that conform to the standards under the zoning ordinance and this chapter.

(B) Except where noted, these requirements are minimum requirements.

(C) Where necessary to accommodate the particular needs of the Development Plan and site plan under review, or the particular needs of the community outside of the proposed development that will be impacted by the development, the Plan Commission may include higher standards and greater requirements.

(Ord. passed - -, § 153.051)

§ 153.092 COMPLIANCE WITH COMPREHENSIVE PLAN, SUBDIVISION AND ZONING ORDINANCES.

(A) Before plan approval shall be granted, the Plan Commission shall determine if the Development Plan and site plan complies with the provisions of the Comprehensive Plan, the subdivision and zoning ordinances.

(B) In making its determination, the Plan Commission shall review the Development Plan for, but not limited to, the following.

- (1) Compatibility of the Development Plan with surrounding land uses.
- (2) Compatibility of the Development Plan with the recommendations of the Comprehensive Plan.
- (3) Adequate provisions for internal management of traffic.
- (4) Analysis of the capacity of adjacent streets to ensure that they can safely and efficiently accommodate the additional traffic generated by the development.
- (5) Adequate provisions for public facilities and infrastructure, and provisions for the extension of infrastructure to adjacent developable properties.
- (6) Provisions for the allocation of land for streets, parks, schools, public and semi-public buildings, homes, businesses and industry, as appropriate.
- (7) Adequate on-site management of stormwater and erosion control.
- (8) Adequate preservation of healthy trees over 30 inches in diameter, and conservation of sensitive and/or unique natural environments, such as view sheds, creeks, wetlands and karsts landscapes.

(C) However, compliance with these provisions shall not exclude other provisions of the Comprehensive Plan or other conditions favorable to health, safety and convenience, and the harmonious development of the territorial jurisdiction of the town.

(Ord. passed - -, § 153.052)

§ 153.093 CONDITIONS OF THE LAND.

(A) No land shall be developed if the land:

- (1) Is considered by the Plan Commission as unsuitable for the development by reason of flooding, improper drainage or any topographic feature deemed harmful to the health and safety of the community; or

(2) Shall qualify for environmental review by any environmental condition of the land, which has not been reviewed and/or remediated in accordance with federal and state laws.

(B) Due consideration shall be given by the petitioner to the prevention of air and stream pollution, preservation of trees and unique sensitive habitat, and the proper treatment and disposal of waste and refuse.

(Ord. passed - -, § 153.053)

§ 153.094 PUBLIC SITES.

(A) Whenever the reasonable requirements provided by these regulations shall indicate the necessity for providing for a school site, park or other recreational site, or other public lands within any proposed development, and if the lands have not been dedicated to the city, county, local board of education or other appropriate public agency, and if no provision has been made for the dedication, then the lands shall be reserved for acquisition, by purchase or other means, by the appropriate agency having jurisdiction over the land for a period of not less than 4 years.

(B) If the 4 years has expired without acquisition procedures having begun, the owners of the lands shall have the right to develop the lands in any other manner consistent with these regulations.

(Ord. passed - -, § 153.054)

§ 153.095 ESTIMATE OF COST OF CONSTRUCTION.

The petitioner shall employ a registered professional land surveyor or engineer to make an estimate of the probable expenditures necessary to enable the petitioner to build the required improvements in conformance with the standards established in this code and the town.

(Ord. passed - -, § 153.055)

§ 153.096 WAIVER AND MODIFICATION OF DEVELOPMENT PLAN.

(A) Where evidence may support a petitioner's challenge to these regulations, in that extraordinary hardship or practical difficulty may result from strict compliance with these regulations, and/or that the purpose of these regulations may be served to a greater extent by an alternative proposal, innovative concept plan or cluster development, the proposed plan shall be referred to the Plan Commission.

(B) The Plan Commission may grant a waiver to these development regulations so that substantial justice may be done and the public interest secured; provided that:

(1) The waiver shall not have the effect of nullifying the intent and purpose of these regulations; and

(2) The Plan Commission shall not grant a waiver unless it shall make findings in writing based upon the evidence presented to it in each specific case that the following criteria have been affirmatively determined:

(a) If granted, the waiver will not be detrimental to public safety, health or welfare or injurious to other property;

(b) Except for innovative design concept, the conditions upon which the request for a waiver is based on the uniqueness of the property for which waiver is sought, and are not applicable generally to other property;

(c) Due to the peculiar physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from mere inconvenience, if the strict letter of these regulations is carried out:

1. Financial hardship shall not constitute grounds for a waiver.

2. However, innovative design concept and/or clustering of structures to minimize infrastructure costs and design around natural features may be considered for a waiver to the strict application of the subdivision code.

(d) The waiver shall comply substantially with the provisions of the Comprehensive Plan.

(C) A petition for waiver shall be submitted in writing by the petitioner prior to the Plan Commission's hearing for approval of the preliminary plat.

(1) The petition shall state fully the reasons for the application and the facts relied upon by the petitioner.

(2) Where the waiver has an impact on design and construction of public facilities, all appropriate public agencies shall be given ample time to investigate the petition and comment in writing to the Plan Commission.

(3) In approving waivers, the Plan Commission may require the conditions as will, in its judgment, substantially secure the objectives of the subdivision regulations.

(4) Where the waiver requested involves innovative design concept or clustering of structures, additional drawings, site plan attachments, support documentation and/or qualified opinions may be required.

(Ord. passed - -, § 153.056)

§ 153.097 APPEALS TO THE PLAN COMMISSION.

(A) Any person aggrieved by a decision of the Plan Commission concerning any official action on an application for subdivision approval may appeal to the Plan Commission in writing for modification of their decision in accordance with I.C. 36-7-4708.

(B) Where a decision by the Plan Commission was made at a public hearing and that decision is under appeal, a public hearing shall again be required in order to hear the appeal of that decision.

(Ord. passed - -, § 153.057)

§ 153.098 SURVEY MONUMENTS.

(A) For any subdivision of land, permanent survey monuments shall be set:

- (1) At the corners and other points of angular change in the perimeter of the subdivision;
- (2) At all intersections of lot lines with other lines; and
- (3) At points of angular change in lot lines.

(B) Monuments shall be 5/8 inch diameter by 30 inch long steel bars, each with the surveyor's registration number on its cap.

(C) Monuments shall extend not more than 1 inch above nor more than 3 inches below the finished grade of the land.

(Ord. passed - -, § 153.058)

§ 153.099 BLOCKS.

(A) Blocks shall not exceed 800 feet in length, as measured between the right-of-way lines of the cross streets, or from the right-of-way line of the cross street and the rearmost property line of the lot at the end of a cul-de-sac or dead-end street.

(B) Cul-de-sacs may not be any longer than 600 feet, and shall end at a 80 foot diameter circle drive for fire truck turnaround space.

(Ord. passed - -, § 153.059)

§ 153.100 LOTS AND STREETS.

(A) All lots shall be arranged so that each building or structure to be placed thereon shall have adequate space for light, air and fire protection.

(B) Each building shall be so sited as to provide convenient access to streets and parking facilities.

(C) The following specifications shall apply to all lots.

(1) *Rights-of-way and streets.*

(a) Every lot shall abut an improved street in a dedicated public right-of-way.

(b) No double-fronted lots where homes abut 2 parallel streets are allowed.

(2) *Building setbacks.*

(a) Minimum building setback lines shall be established on all lots.

(b) Minimum building setback lines shall be appropriate for the location of the subdivision, for the type of development and the use contemplated.

(c) Provided, however, that they shall be not less than the standards established in the zoning ordinance for the zoning district in which the lot is located.

(3) *Area and frontage.*

(a) The area, minimum frontage, depth and width requirements shall be not less than the standards established in the zoning ordinance.

(b) Waivers may be possible for innovative design concepts or cluster design.

(4) *Lot line design.* Side lot lines at right-angles to street lines are preferred, except for curve or cul-de-sac locations.

(D) Minimum right-of-way, street and alley construction standards are in the subchapter on streets and rights-of-way, §§ 153.120 through 153.136.

(Ord. passed - -, § 153.060)

§ 153.101 ALLEYS.

(A) Alleys are generally not recommended and may be considered for innovative, “New Urbanism” designs only.

(B) The waiver process may be followed at the developer's request.

(Ord. passed - -, § 153.061)

§ 153.102 UTILITY EASEMENTS.

(A) *Use of stormwater easements prohibited.* The public utility easement shall not be used as surface stormwater easements, and access to utility easements for utility installation or service shall not be via surface stormwater easements.

(B) *Standards.* Dedicated public utility easements shall be provided in accordance with the following standards.

(1) *Rear lot lines.*

(a) Where a dedicated public alley is not provided along the rear of each lot, each lot shall have a public utility easement of not less than 20 feet in width located along the entire width of the rear lot line.

(b) Where so located along lot lines within the subdivision, 1/2 of the easement shall be taken from the rear of each lot.

(2) *Side lot lines.* Public utility easements shall be dedicated along interior side lot lines, as required by the conditions of the installation of services and as determined by the providers thereof.

(3) *Front lot lines.* In addition to the right-of-way dedication, public utility easements may be required as a condition of approval of a subdivision of land to facilitate the installation of services where the services cannot be provided except under the paved portion of a street.

(Ord. passed - -, § 153.062)

STREETS AND RIGHTS-OF-WAY

§ 153.120 APPLICABILITY.

The street development standards in this subchapter apply to all streets within the towns planning jurisdiction.

(Ord. passed - -, § 153.070)

§ 153.121 GENERAL DESIGN CONSIDERATIONS.

(A) Street layout and construction shall take into account the relationship of the proposed streets to:

- (1) Existing and planned streets;
- (2) Adjacent developments;
- (3) Topographical conditions;
- (4) Public convenience and safety; and
- (5) The proposed uses of the land to be served by the streets.

(B) Where a new street is located in a dedicated public right-of-way and complies with the design and construction requirements for inclusion in the maintenance program of the town or county, as appropriate, the petitioner shall dedicate the street to the town or county as public improvements after construction and acceptance by the town or county and the same shall be certified by the developer, property owner, and the Town Council on the plat before inclusion in the Town

maintenance program will be accepted.

(Ord. passed - -, § 153.071)(Am. Ord 2023-01, 02/21/2023)

§ 153.122 STREET DESIGN STANDARDS.

(A) The petitioner shall design and provide the proposed development with paved streets in dedicated public rights-of-way in accordance with this code's design criteria.

(B) Plans, profiles and cross sections for paved streets shall be prepared by a registered professional engineer or land surveyor and approved by the Town Council.

(C) Where any design standards are not specified herein, the design standards of the Indiana Department of Transportation's 1995 Standard Specifications, as amended, shall be used.

(Ord. passed - -, § 153.072)

§ 153.123 SIGHT DISTANCE.

At the intersection of any street, alley or driveway with a street, the minimum distance that an observer sitting in an automobile at the intersection shall be able to see a vehicle approaching from any direction on a through street crossing the intersection shall be not less than the distance shown below corresponding to the posted speed limit:

<i>Mph</i>	<i>Feet</i>
20	177
25	217
30	267
35	328
40	403
45	482
50	571
55	655

(Ord. passed - -, § 153.073)

§ 153.124 EXTENSION OF STREETS.

In order to provide for future development of adjacent land, and as required by the Plan Commission, the following shall apply.

(A) *Proposed streets.* Proposed streets shall be extended to the boundary line of an adjacent tract, and terminated without a turnaround.

(B) *Extension of streets.* Where an existing street terminates at the boundary line of a proposed subdivision, either the street shall be continued in the street pattern of the proposed subdivision, or a turnaround shall be provided in the proposed subdivision in accordance with the requirements for cul-de-sacs.

(C) *Cul-de-sacs.* Except for streets approved for future extension into adjacent developable territory, the closed end of a dead-end street shall be provided with a cul-de-sac for vehicle turnaround with an 80 foot radius.

(D) *Connectivity.*

(1) Except for subdivisions of 10 lots or less, a connecting through street to channel traffic easily from 1 subdivision to another is required.

(2) Loop roads may be used if the through street is blocked by a topographical constraint.

(E) *Access.*

(1) Subdivisions over 10 lots must provide 2 access ways in and out of the subdivision for emergency vehicles.

(2) Loop roads may loop back to 1 main entrance if the loop effectively gives access in 2 directions.

(Ord. passed - -, § 153.074)

§ 153.125 INTERSECTIONS.

Proposed intersections shall comply with the following design criteria:

(A) *Cross streets.*

(1) The extension of a proposed street into the development in alignment with an existing street at an intersection shall be preferred.

(2) Where a proposed intersection cannot match the centerline alignment of an existing street at the intersection, the intersection shall be offset by not less than 125 feet.

(B) *Driveways*. Driveways shall have the following minimum separation distances:

- (1) Not closer than 25 feet to the intersection of any streets or alleys;
- (2) Not closer than 4 feet to any other curb opening; and
- (3) Not closer than 2 feet to a property line.

(C) *Angle of intersection*. Streets and driveways shall intersect as nearly as possible at right angles, but not less than 70 degrees nor more than 110 degrees.

(D) *Arc*. Property lines at intersections shall be rounded by the following arcs:

- (1) At the intersection of a local street with another street: at least 25 feet; and
- (2) At all other street intersections: at least 50 feet.

(Ord. passed - -, § 153.075)

§ 153.126 GRADING.

Final surface grades on streets shall be not less than 0.5%, nor greater than 8%, as measured along the centerline of the street.

(Ord. passed - -, § 153.076)

§ 153.127 TRAVERSE SLOPES.

(A) The slope of the pavement from the crown of the street to the edge of pavement, or pan of the gutter if present, shall be 2.08%.

(B) The slope on shoulders shall be 4%.

(Ord. passed - -, § 153.077)

§ 153.128 MINIMUM RADII OF CURVATURE ON THE CENTERLINE.

Where a deflection angle of greater than 10 degrees in the alignment of a street occurs, a curve shall be introduced as follows:

(A) Collector streets: 500 feet; and

(B) Local and industrial streets: 150 feet.

(Ord. passed - -, § 153.078)

§ 153.129 MINIMUM RIGHT-OF-WAY WIDTHS.

(A) Where a proposed lot abuts an existing public street with a half right-of-way width of less than 30 feet on the side of the street on which the lot is located, the owner shall dedicate land as necessary to

provide a half right-of-way of 30 feet width as a public half right-of-way along the entire property line that abuts the street, except, however, that where the street is a state or federal street, the half right-of-way dedication shall conform with the state or federal requirement for the particular street on which the lot abuts, but shall be not less than 30 feet of the total half right-of-way width.

(B) The minimum width of dedicated public right-of-way within a development including a subdivision shall be not less than:

- (1) Streets: 60 feet;
- (2) Cul-de-sac (local street): outside diameter of 100 feet; and
- (3) Cul-de-sac (industrial street): outside diameter of 120 feet.

(C) (1) The right-of-way width for streets under state or federal control shall be as determined by the owner thereof, but shall be dedicated at not less than 60 feet in width.

(2) Arterial streets or streets subject to widening may require a 50 foot dedication from the centerline.

(Ord. passed - -, § 153.079)

§ 153.130 HALF RIGHTS-OF-WAY FOR STREETS AND ALLEYS.

Dedication of half rights-of-way along the boundary of the land to be developed will be permitted only if the owner of the adjoining undeveloped land simultaneously dedicates the other half of the right-of-way as part of the plat.

(Ord. passed - -, § 153.080)

§ 153.131 PAVEMENT WIDTHS.

Minimum widths of paved surfaces of streets and alleys shall be:

<i>Street Classification</i>	<i>Width of Pavement, including Curb and Gutter</i>
Collector and local streets	Director of Planning Services uses the Street Department and thoroughfare plan
Cul-de-sac: local street	80 feet back-to-back of curb and gutter
Cul-de-sac: industrial street	100 feet back-to-back of curb and gutter

(Ord. passed - -, § 153.081)

§ 153.132 PAVEMENT MATERIALS AND MINIMUM DEPTHS.

Pavements shall meet the following standards:

<i>Material</i>	<i>Depth</i>	
	Industrial and Collector Streets	Local Streets
Sub-Base (under all pavements)		
Compacted aggregate #53 (95% density)	8 inches	6 inches
Flexible asphaltic pavement		
Base #5	3 inches	2 inches
Binder #9	2 inches	N/A
Surface #11	1 inch	1 inch
Portland cement concrete pavement		
Concrete (3,500 p.s.i. or greater, as required by the traffic load)	7 inches	6 inches
Note: Expansion joints shall be provided at the ends of each radius section and every 150 feet. Control joints shall be provided every 10 feet.		
Chip and seal pavement		
N/A	N/A	Local standard

(Ord. passed - -, § 153.082)

§ 153.133 CURBS AND GUTTERS.

(A) Concrete curbs and gutters shall be installed on each side of the paved street surface.

(B) The type selected shall be either stand-up, rolled or V-curb and according to the following specifications:

(1) *Base.* The base for the curb and gutter shall be 3 inches of compacted #53 aggregate or #11 stone.

(2) *Expansion and control joints.*

(a) Expansion joints shall be provided at the ends of each radius section and every 150 feet.

(b) Control joints shall be provided every 10 feet.

(c) Joints shall be filled with approved foams.

(3) *Concrete.* All concrete used in the curb and gutter shall be 3,500 p.s.i. or greater, as required by the traffic load, and shall meet the standard specifications for curbs and gutters of the Indiana Department of Transportation.

(Ord. passed - -, § 153.083)

§ 153.134 SHOULDERS.

Grass-surfaced shoulders, with a width of not less than 6 feet and a slope with a run and/or rise ratio of 3:1 or flatter, shall be installed along and adjacent to each side of a developed street or alley, and shall blend into the adjoining yard or drainage improvements as required.

(Ord. passed - -, § 153.084)

§ 153.135 SIDEWALKS.

(A) Sidewalks are required.

(1) Where installed, they shall be constructed of Portland cement concrete, not less than 4 inches thick and 5 feet wide, on 3 inches of compacted #53 aggregate.

(2) The slopes shall have run/rise ratios of 12:1 longitudinal and 50:1 lateral or flatter.

(3) Terminations at streets and driveways shall be ADA compliant.

(B) The following are encouraged:

(1) Tree plots between the sidewalk and the curb;

(2) Walking trails through natural areas and along the boundary of the subdivision; and

(3) Trails to other natural locations and parks.

(C) Added walking trails, green space and playgrounds may qualify a development for a density bonus.

(Ord. passed - -, § 153.085)

§ 153.136 SIGNS.

The petitioner shall provide the development with street signs, including, but not limited to, stop, street identification, parking control and information signs, in accordance with the standards of the town and the County Highway Department, and those in the *Indiana Manual on Uniform Traffic Control Devices for Streets and Highways*.

(Ord. passed - -, § 153.086)

WASTEWATER SERVICE

§ 153.150 WASTEWATER TREATMENT; SANITARY SEWER STANDARDS.

(A) Where the system is to be connected to a public wastewater treatment system, the plans shall be certified by a professional engineer registered in Indiana.

(B) Where the system will connect to the town's wastewater facilities:

(1) The system shall be designed in accordance with the town's design standards;

(2) The plans shall be approved by the Town Council; and

(3) The petitioner shall obtain Indiana Department of Environmental Management construction permits.

(C) In all other cases, design and plan approval shall be by the appropriate county, state and federal agencies as required.

(D) The town may enter into contractual services to run, maintain or advise the operation of the town's wastewater facilities.

(E) Expansion and sizing of wastewater facilities must consult the land use policies of the Comprehensive Plan.

(Ord. passed - -, § 153.090)

§ 153.151 ACCEPTANCE OF IMPROVEMENTS.

(A) Where a new system is connected to the town's wastewater treatment facilities, conforms with the town's design and construction requirements, is located in a public right-of-way or dedicated public utility easement, and is accepted by the town. The petitioner may dedicate the public components of the system to the town as public improvements after installation and the same shall be certified by the developer, property owner, and the Town Council on the plat before inclusion in the Town maintenance program will be accepted.

(B) As-built plans for the completed system shall be filed with the Town Wastewater Department.

(Ord. passed - -, § 153.091)(Am. Ord. 2023-02, passed 2-21-2023)

§ 153.152 WASTEWATER TREATMENT OPTIONS.

(A) Options for the method of wastewater treatment for a proposed development do not exist.

(B) New methods for waste water disposal may be designed and models may be built on a small scale for research.

(C) However, no residential, commercial or industrial waste water system may be substituted for the town's public waste water system that is already in place.

(Ord. passed - -, § 153.092)

WATER SERVICE

§ 153.170 WATER SUPPLY SYSTEM STANDARDS.

(A) Where the system is to be connected to a public potable water system, the plans shall be certified by a professional engineer registered in Indiana.

(B) Where the system will connect to the town's or another public water distribution system:

(1) The system shall be designed in accordance with the town's design standards;

(2) The plans shall be approved by the Town Council or another utility board; and

(3) The petitioner shall obtain Indiana Department of Environmental Management construction permits.

(C) In all other cases, design and plan approval shall be by the appropriate county, state and federal agencies as required.

(Ord. passed - -, § 153.100)

§ 153.171 ACCEPTANCE OF IMPROVEMENTS.

(A) Where a new system is connected to the town's water facilities, conforms with the town's design and construction requirements, is located in a public right-of-way or dedicated public utility easement, and is accepted by the town, the petitioner shall dedicate the public components of the system to the town as public improvements after installation.

(B) As-built plans for the completed system shall be filed with the Town Water Utility Department.
(Ord. passed - -, § 153.101)

§ 153.172 FIRE HYDRANTS.

(A) On any potable water supply system installed in an area served by the Town Fire Department, the petitioner shall install fire hydrants along the water main at intervals not to exceed 600 feet.

(B) Fire hydrant plans and installation shall be approved by the Town Council.

(C) Fire truck ease of access is required.

(Ord. passed - -, § 153.102)

ELECTRIC AND COMMUNICATIONS SERVICES

§ 153.190 ELECTRIC SERVICE.

(A) The petitioner shall arrange for the provision of a complete electric service supply system, providing not less than 2 phase, 120 volt, 60 cycle electric service, and located within dedicated public rights-of-way or public utility easements.

(B) Within the town, provisions shall be included for locating street lights at intersections, as required under the town's street light policy.

(C) The developer shall pay for the provision of street lights.

(D) Providing numbers of street lights sufficient for safety must be balanced by a concern for not adding to overall light pollution.

(Ord. passed - -, § 153.110)

§ 153.191 COMMUNICATIONS SERVICES.

(A) The petitioner is required to arrange for the provision of a system of telephone and other communications services.

(B) Dedicated public rights-of-way or public utility easements shall be provided for these services.
(Ord. passed - -, § 153.111)

ADMINISTRATION AND ENFORCEMENT

§ 153.205 DUTIES OF THE DIRECTOR OF PLANNING SERVICES.

The designated Town Director of Planning Services is hereby vested with the duty to administer and enforce the regulations under this chapter.
(Ord. passed - -, § 153.120)

§ 153.206 REFERENCE TO OTHER STATUTES AND REGULATIONS.

Any legal citation or reference to another statute, ordinance or regulation shall be meant to include all amendments thereto or replacement thereof.
(Ord. passed - -, § 153.121)

§ 153.207 CONFLICT WITH OTHER STATUTES.

Where the requirements under this chapter are in conflict with the requirements of any other statute or law that is in effect within the town's territorial jurisdiction, the more restrictive requirements shall prevail.
(Ord. passed - -, § 153.122)

§ 153.999 PENALTY.

(A) Any person, firm or corporation violating any of the provisions of this chapter shall be fined \$50 for each offense.

(B) A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.
(Ord. passed - -, § 153.124)

CHAPTER 154 TAX ABATEMENTS

Section

154.001 Legislative Findings

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154.010 Requirement To Appear And Update Information

154.011 Failure Of Petitioner To Comply May Result In Fines Being Imposed and/Or Repayment Of Taxes Previously Abated.

154.012 Facilities Not Authorized to Receive A Tax Abatement For Real Property

154.013 Fees for Deduction

§ 154.001 LEGISLATIVE FINDINGS

The tax abatement procedures and general standards set forth in this chapter are promulgated pursuant to the Home Rule powers vested in the county pursuant to I.C. 36-1-3-1 *et seq.*, and the "Deduction for Rehabilitation or Redevelopment of Real Property in Economic Revitalization Areas" statute set forth in I.C. 6-1.1-12.1-1 *et seq.* All persons who desire to seek real or personal property tax abatement consideration have the duty to comply with the applicable provision set forth in this chapter, as well as all state law requirements.

(Ord. 2020-13, passed 8-17-2020)

§ 154.002 DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AFFILIATE means an entity that effectively controls or is controlled by a deduction applicant or is associated with a deduction applicant under common ownership or control, whether by shareholdings or other means.

COUNCIL. The Spencer Town Council.

COUNTY ASSESSOR. The Assessor of Owen County, Indiana.

COUNTY AUDITOR. The Auditor of Owen County, Indiana

DESIGNATING BODY means the Spencer Town Council

DEDUCTION APPLICANT means an owner of tangible personal property who makes a deduction application.

DEDUCTION APPLICATION means:

(A) the application filed in accordance with IC 6-1.1-12.1 et seq. by a property owner who desires to obtain the deduction as provided for in IC 6-1.1-12.1 et seq.

DESIGNATION APPLICATION means an application that is filed with a Designating Body to assist that body in making a determination about whether a particular area should be designated as an economic revitalization area.

ECONOMIC DEVELOPMENT TARGET AREA is an area that:

(1) has become undesirable or impossible for normal development and occupancy because of a lack of development, cessation of growth, deterioration of improvements or character of occupancy, age, obsolescence, substandard buildings, or other factors that have impaired values or prevent a normal development of property or use of property;

(2) has been designated as a registered historic district under:

(A) the National Historic Preservation Act of 1966; or

(B) the jurisdiction of a preservation commission organized under:

(i) IC 36-7-11;

(ii) IC 36-7-11.1;

(iii) IC 36-7-11.2;

(iv) IC 36-7-11.3; or

(v) IC 14-3-3.2 (before its repeal); or

(3) encompasses buildings, structures, sites, or other facilities that are:

(A) listed on the national register of historic places established pursuant to 16 U.S.C. 470

et seq.;

(B) listed on the register of Indiana historic sites and historic structures established under IC 14-21-1; or

(C) determined to be eligible for listing on the Indiana register by the Indiana state historic preservation officer

ECONOMIC REVITALIZATION AREA means an area which is within the corporate limits of a city, town, or county which has become undesirable for, or impossible of, normal development and occupancy because of a lack of development, cessation of growth, deterioration of improvements or character of occupancy, age, obsolescence, substandard buildings, or other factors which have impaired values or prevent a normal development of property or use of property. The term “economic revitalization area” also includes:

(A) any area where a facility or a group of facilities that are technologically, economically, or energy obsolete are located and where the obsolescence may lead to a decline in employment and tax revenues; and

(B) a residentially distressed area, except as otherwise provided in this chapter.

“City” means any city in this state, and “town” means any town incorporated under IC 36-5-1.

“New manufacturing equipment” means tangible personal property that a deduction applicant:

(A) installs on or before the approval deadline determined under section 9 of this chapter, in an area that is declared an economic revitalization area in which a deduction for tangible personal property is allowed;

(B) uses in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property, including but not limited to use to dispose of solid waste or hazardous waste by converting the solid waste or hazardous waste into energy or other useful products;

(C) acquires for use as described in clause (B):

(i) in an arm’s length transaction from an entity that is not an affiliate of the deduction applicant, if the tangible personal property has been previously used in Indiana before the installation described in clause (A); or

(ii) in any manner, if the tangible personal property has never been previously used in Indiana before the installation described in clause (A); and

(D) has never used for any purpose in Indiana before the installation described in clause

(A).

ELIGIBLE VACANT BUILDING means a building that:

(A) is zoned for commercial or industrial purposes; and

(B) is unoccupied for at least one (1) year before the owner of the building or a tenant of the owner occupies the building, as evidenced by a valid certificate of occupancy, paid utility receipts, executed lease agreements, or any other evidence of occupation that the department of local government finance requires.

HAZARDOUS WASTE has the meaning set forth in IC 13-11-2-99(a). The term includes waste determined to be a hazardous waste under IC 13-22-2-3(b).

NEW RESEARCH AND DEVELOPMENT EQUIPMENT means tangible personal property that:

(A) a deduction applicant installs on or before the approval deadline determined under IC 6-1.1-12.1 et seq., in an economic revitalization area in which a deduction for tangible personal property is allowed;

(B) consists of:

- (i) laboratory equipment;
- (ii) research and development equipment;
- (iii) computers and computer software;
- (iv) telecommunications equipment; or
- (v) testing equipment;

(C) the deduction applicant uses in research and development activities devoted directly and exclusively to experimental or laboratory research and development for new products, new uses of existing products, or improving or testing existing products;

(D) the deduction applicant acquires for purposes described in this subdivision:

(i) in an arms length transaction from an entity that is not an affiliate of the deduction applicant, if the tangible personal property has been previously used in Indiana before the installation described in clause (A); or

(ii) in any manner, if the tangible personal property has never been previously used in Indiana before the installation described in clause (A); and

(E) the deduction applicant has never used for any purpose in Indiana before the installation described in clause (A).

The term does not include equipment installed in facilities used for or in connection with efficiency surveys, management studies, consumer surveys, economic surveys, advertising or promotion, or research in connection with literacy, history, or similar projects.

NEW LOGISTICAL DISTRIBUTION EQUIPMENT means tangible personal property that:

(A) a deduction applicant installs on or before the approval deadline determined under 6-1.1-12.1 et seq., in an economic revitalization area in which a deduction for tangible personal property is allowed;

(B) consists of:

- (i) racking equipment;
- (ii) scanning or coding equipment;
- (iii) separators;
- (iv) conveyors;
- (v) forklifts or lifting equipment (including “walk behinds”);
- (vi) transitional moving equipment;
- (vii) packaging equipment;
- (viii) sorting and picking equipment; or
- (ix) software for technology used in logistical distribution;

(C) the deduction applicant acquires for the storage or distribution of goods, services, or information:

(i) in an arms length transaction from an entity that is not an affiliate of the deduction applicant, if the tangible personal property has been previously used in Indiana before the installation described in clause (A); and

(ii) in any manner, if the tangible personal property has never been previously used in Indiana before the installation described in clause (A); and

(D) the deduction applicant has never used for any purpose in Indiana before the installation described in clause (A).

NEW INFORMATION TECHNOLOGY EQUIPMENT means tangible personal property that:

(A) a deduction applicant installs on or before the approval deadline determined under 6-1.1-12.1 et seq., in an economic revitalization area in which a deduction for tangible personal property is allowed;

(B) consists of equipment, including software, used in the fields of:

- (i) information processing;
- (ii) office automation;

- (iii) telecommunication facilities and networks;
- (iv) informatics;
- (v) network administration;
- (vi) software development; and
- (vii) fiber optics;

(C) the deduction applicant acquires in an arms length transaction from an entity that is not an affiliate of the deduction applicant; and

(D) the deduction applicant never used for any purpose in Indiana before the installation described in clause (A).

PROPERTY means a building or structure but does not include land.

REDEVELOPMENT means the construction of new structures, in economic revitalization areas, either:

(A) on unimproved real estate; or

(B) on real estate upon which a prior existing structure is demolished to allow for a new construction.

REHABILITATION means the remodeling, repair, or betterment of property in any manner or any enlargement or extension of property.

RESIDENTIAL DISTRESSED AREA is:

(1) The area is comprised of parcels that are either unimproved or contain only one (1) or two (2) family dwellings or multifamily dwellings designed for up to four (4) families, including accessory buildings for those dwellings.

(2) Any dwellings in the area are not permanently occupied and are:

(A) the subject of an order issued under IC 36-7-9; or

(B) evidencing significant building deficiencies.

(3) Parcels of property in the area:

(A) have been sold and not redeemed under IC 6-1.1-24 and IC 6-1.1-25; or

(B) are owned by a unit of local government.

SOLID WASTE has the meaning set forth in IC 13-11-2-205(a). However, the term does not include dead animals or any animal solid or semisolid wastes.

TAX INCREMENT ALLOCATION AREAS (TIAA). Has the meaning set forth in I.C. 36-7-14-39(a).

(Ord. 2020-13, passed 8-17-2020)

§ 154.003 TYPES OF ABATEMENTS

The Designating Body will consider tax abatement applications for the following types of requests:

(A) Real Estate within the Economic Revitalization Area or Economic Development Target Area. Deduction may not exceed ten (10) years.

(B) Personal Property within the Economic Revitalization Area that meets the statutory definitions for new manufacturing equipment, new research and development equipment, new logistical distribution equipment, or new information technology equipment. Deduction may not exceed ten (10) years, unless Deduction Application qualifies for an enhanced abatement schedule, which shall not exceed twenty (20) years.

(C) Eligible Vacant Buildings within the Economic Revitalization Area. Deduction may not exceed three (3) years.

(D) Residential structures within a Residential Distressed Area or Economic Development Target Area. Deduction may not exceed three (3) years.

(Ord. 2020-13, passed 8-17-2020)

Statutory reference:

Authority, see I.C. 6-1.1-12-1 et seq

§ 154.004 DECLARATION OF ECONOMIC REVITALIZATION AREAS

(A) The Town of Spencer establishes the following areas to be economic revitalization areas:

Those portions of Section 19, Section 20, Section 21, Section 28, and Section 29 all in – Township 10 North – Range 3 West of the second principal meridian, Owen County, Indiana more particularly described as follows:

Considering the West line of the Northwest Quarter of said Section 20 as bearing South 00 degrees 22 minutes 57 seconds East with all bearings contained herein relative thereto.

Commencing at the Northwest corner of said Section 20, monumented by a Brass plug; thence on and along the West line of the Northwest Quarter of said Section 20, South 00 degrees 22 minutes 57 seconds East 2623.01 feet to the North right-of-way of State Road #46, same being the **POINT OF**

BEGINNING; thence on and along said right-of-way, South 89 degrees 22 minutes 47 seconds East 96.78 feet to the beginning of a tangent curve to the right having a radius of 1475.00 feet, a central angle of 09 degrees 30 minutes 16 seconds, a radial line passing thru said point bears North 00 degrees 37 minutes 13 seconds East; thence on and along the arc of said curved right-of-way 244.68 feet to the Southeast corner of that certain parcel of land described in deed recorded in Book 209, Page 377 records of said county, thence on and along the East line of said certain parcel, North 00 degrees 22 minutes 57 seconds West 375.49 feet to the Northeast corner thereof; thence South 89 degrees 25 minutes 52 seconds East 993.92 feet; thence North 00 degrees 38 minutes 26 seconds West 593.28 feet; thence South 88 degrees 34 minutes 26 seconds East 922.82 feet; thence South 00 degrees 38 minutes 26 seconds East 241.46 feet; thence South 89 degrees 21 minutes 34 seconds West 486.00 feet; thence, South 00 degrees 38 minutes 26 seconds East 337.78 feet to an overhead power line; thence South 88 degrees 06 minutes 23 seconds East 479.49 feet to an overhead power line; thence on and along said power line, North 00 degrees 08 minutes 10 seconds West 123.05 feet; thence North 89 degrees 17 minutes 38 seconds East 1620.12 feet to the East right-of-way of old State Road #43; thence on and along said right-of-way, North 00 degrees 45 minutes 44 seconds West 310.99 feet to the beginning of a tangent curve to the right having a radius of 695.00 feet, a central angle of 26 degrees 32 minutes 47 seconds, a radial line passing thru said point bears South 89 degrees 14 minutes 16 seconds West; thence Northerly along the arc of said curved right-of-way 322.01 feet; thence leaving said right-of-way; North 89 degrees 32 minutes 21 seconds East 2047.99 feet; thence South 01 degrees 57 minutes 39 seconds East 132.00 feet to the intersection of the West right-of-way of Laymon Avenue and the North right-of-way of James Street; thence on and along said North right-of-way South 86 degrees 48 minutes 04 seconds East 155.50 feet to the beginning of a tangent curve to the left having a radius of 125.00 feet, a central angle of 70 degrees 49 minutes 42 seconds; thence Northeasterly on and along the arc of said curved right-of-way 154.52 feet; thence North 22 degrees 22 minutes 14 seconds East 97.09 feet to the beginning of a tangent curve to the right, having a radius of 60.00 feet and a central angle of 70 degrees 52 minutes 09 seconds; thence Northeasterly on and along said curved Right-of-Way 74.21 feet; thence continuing on and along said right-of-way and the easterly extension thereof, South 86 degrees 45 minutes 37 seconds East 30.67 feet to the centerline of State Road #67; thence on and along said centerline, North 21 degrees 39 minutes 38 seconds East 359.60 feet; thence leaving said centerline, South 67 degrees 44 minutes 22 seconds East 259.66 feet to an iron pipe found; thence, North 39 degrees 07 minutes 38 seconds East 25.48 feet to an iron pipe found; thence South 54 degrees 51 minutes 22 seconds East 134.88 feet to an iron pipe found; thence South 10 degrees 02 minutes 38 seconds West 372.98 feet to an iron pipe; thence South 64 degrees

45 minutes 22 seconds East 238.79 feet to an iron pipe found; thence South 24 degrees 00 minutes 22 seconds East 534.86 feet to an iron pipe found; thence South 57 degrees 43 minutes 38 seconds West 424.38 feet to an iron pipe found; thence North 49 degrees 20 minutes 22 seconds West 51.92 feet to an iron pipe found; thence North 73 degrees 36 minutes 22 seconds West 39.87 feet; thence South 68 degrees 19 minutes 38 seconds West 59.81 feet; thence South 66 degrees 50 minutes 38 seconds West 252.00 feet; thence South 42 degrees 38 minutes 38 seconds West 52.00 feet to an iron pipe found; thence South 00 degrees 23 minutes 38 seconds West 86.03 feet; thence East 90 degrees 00 minutes 00 seconds 343.46 feet; thence South 77 degrees 30 minutes 00 seconds East 486.00 feet to the Northwest corner of Kay's Addition; thence the next 14 courses and distances being on and along the North, East and South lines of said Kay's Addition, North 88 degrees 25 minutes 08 seconds East 67.50 feet; thence South 71 degrees 08 minutes 52 seconds East 139.70 feet; thence South 75 degrees 41 minutes 52 seconds East 200.70 feet; thence South 74 degrees 06 minutes 52 seconds East 148.30 feet; thence South 70 degrees 04 minutes 52 seconds East 154.40 feet; thence South 71 degrees 30 minutes 52 seconds East 270.80 feet; thence South 02 degrees 04 minutes 08 seconds West 143.60 feet; thence South 75 degrees 42 minutes 08 seconds West 259.40 feet; thence South 67 degrees 33 minutes 08 seconds West 159.00 feet; thence South 65 degrees 08 minutes 08 seconds West 247.10 feet; thence South 72 degrees 34 minutes 08 seconds West 90.50 feet; thence South 73 degrees 11 minutes 08 seconds West 147.00 feet; thence North 68 degrees 20 minutes 52 seconds West 57.20 feet; thence North 12 degrees 05 minutes 52 seconds West 33.60 feet to the East right-of-way of Crane Avenue; thence on and along said right-of-way, South 03 degrees 02 minutes 04 seconds East 186.40 feet to the North right-of-way of State Road #46; thence on and along said North right-of-way, North 74 degrees 37 minutes 56 seconds East 362.85 feet to the Northeast corner of that certain parcel of land described in deed recorded in Book 207, Page 100 records of said county; thence the next four courses and distances being on and along the East and South lines of said certain parcel, South 00 degrees 09 minutes 56 seconds West 233.30 feet; thence North 89 degrees 50 minutes 04 seconds West 211.20 feet; thence South 00 degrees 09 minutes 56 seconds West 70.71 feet; thence North 89 degrees 50 minutes 04 seconds West 126.83 feet to the East right-of-way of said Crane Avenue; thence on and along said right-of-way South 03 degrees 02 minutes 04 seconds East 179.52 feet to the North rail of the Pennsylvania Railroad; thence on and said North rail, South 89 degrees 34 minutes 08 seconds West 955.37 feet to the Northerly extension of the East right-of-way of Taylor Street; thence on and along said Northerly extension and said East right-of-way, South 01 degrees 38 minutes 12 seconds East 727.70 feet to the South right-of-way of Jefferson Street; thence on and along said right-of-way, South 89 degrees 29 minutes 47 seconds West 444.70 feet; thence South 00 degrees

17 minutes 26 seconds East 1781.47 feet to the North bank of the White River; thence the next 7 courses and distances being on and along said North bank, North 75 degrees 10 minutes 07 seconds West 156.90 feet; thence North 67 degrees 38 minutes 48 seconds West 287.91 feet; thence North 65 degrees 17 minutes 46 seconds West 471.26 feet; thence North 68 degrees 52 minutes 16 seconds West 615.88 feet; thence North 82 degrees 21 minutes 02 seconds West 537.32 feet; thence North 86 degrees 55 minutes 33 seconds West 155.46 feet; thence South 80 degrees 52 minutes 44 seconds West 48.26 feet; thence North 00 degrees 38 minutes 35 seconds West 307.80 feet to a rebar; thence North 77 degrees 58 minutes 54 seconds West 1212.84 feet to a rebar; thence North 84 degrees 59 minutes 04 seconds West 1225.50 feet; thence North 00 degrees 12 minutes 05 seconds West 1285.77 feet; thence North 61 degrees 17 minutes 50 seconds West 114.00 feet to the centerline of Fifth Avenue; thence on and along said centerline South 69 degrees 20 minutes 55 seconds West 19.66 feet; thence continuing on and along said centerline, South 60 degrees 46 minutes 47 seconds West 7.93 feet to the West right-of-way of State Road #67 and the beginning of a non-tangent curve to the left having a radius of 595.89 feet and a central angle of 11 degrees 21 minutes 44 seconds, a radial line passing thru said point bears North 54 degrees 18 minutes 08 seconds West; thence on and along the arc of said curved right-of-way 118.71 feet; thence the next nine courses and distances being on and along said right-of-way, South 24 degrees 20 minutes 07 seconds West 705.96 feet; thence South 24 degrees 12 minutes 46 seconds West 449.96 feet to the beginning of a tangent curve to the left having a radius of 2295.46 feet and a central angle of 15 degrees 11 minutes 29 seconds, a radial line passing thru said point bears North 65 degrees 47 minutes 14 seconds West; thence Southwesterly on and along the arc of said curved right-of-way, 608.62 feet; thence South 09 degrees 01 minutes 17 seconds West 402.38 feet; thence South 19 degrees 38 minutes 54 seconds West 101.97; thence South 10 degrees 01 minutes 46 seconds West 98.81 feet to the beginning of a tangent curve to the right having a radius of 1241.78 feet, a central angle of 17 degrees 22 minutes 30 seconds, a radial line passing thru said point bears South 79 degrees 58 minutes 14 seconds East; thence Southerly on and along the arc of said curve 376.56; thence south 27 degrees, 24 minutes 16 seconds West; 379.06 feet to the beginning of a tangent curve to the left having a radius of 2020.41 feet, a central angle of 00 degrees 19 minutes 02 seconds, a radial line passing thru said point bears North 62 degrees 35 minutes 44 seconds West; thence on and along the arc of said curve 11.19 feet to the North line of Thornridge as recorded in Plat Book 3, Page T-1 records of said county; thence the next fourteen courses and distances being on and along the North, East, South, and West lines of said Thornridge, South 86 degrees 43 minutes 36 seconds East 27.36 feet to the West right-of-way of said State Road #67 and the beginning of a tangent curve to the left having a radius of 1995.41 feet, a central angle of 28 degrees 06

minutes 59 seconds, a radial line passing thru said point bears North 62 degrees 35 degrees 44 minutes West; thence on and along the arc of said curve 979.19 feet; thence North 89 degrees 02 minutes 34 seconds West 1305.14 feet; thence North 26 degrees 26 minutes 35 seconds West 146.66 feet; thence North 63 degrees 33 minutes 25 seconds East 180.75 feet; thence North 26 degrees 26 minutes 35 seconds West 185.37 feet; thence North 01 degrees 14 minutes 57 seconds East 110.10 feet; thence South 88 degrees 45 minutes 03 seconds East 248.28 feet; thence North 86 degrees 17 minutes 41 seconds East 226.76 feet; thence North 62 degrees 23 minutes 22 seconds East 57.74 feet; thence North 44 degrees 01 minutes 51 seconds East 181.41 feet; thence North 67 degrees 49 minutes 14 seconds East 98.97 feet; thence North 78 degrees 09 minutes 41 seconds East 144.96 feet; thence North 53 degrees 21 minutes 56 seconds East 252.09 feet; thence leaving the North line of said Thornridge Subdivision, North 00 degrees 54 minutes 47 seconds East 1036.32 feet; thence North 00 degrees 01 minutes 55 seconds East 150.03 feet; thence North 88 degrees 51 minutes 57 seconds West 1920.00 feet; thence North 00 degrees 01 minutes 16 seconds East 407.99 feet to the centerline of Hyden Road; thence on and along said centerline, North 88 degrees 42 minutes 02 seconds West 424.44 feet to a 60D nail on the North-South centerline of said Section 19; thence on and along said North-South centerline, North 01 degrees 16 minutes 17 seconds West 2692.48 feet to the North right-of-way of State Road #46 and the beginning of a non-tangent curve to the left having a radius of 5665.38 feet, a central angle of 05 degrees 52 minutes 33 seconds, a radial line passing thru said point bears South 06 degrees 29 minutes 46 seconds West; thence Easterly on and along the arc of said curved right-of-way 580.99 feet; thence continuing on and along said right-of-way South 89 degrees 22 minutes 47 seconds East 129.43 feet; thence North 00 degrees 37 minutes 13 seconds East 680.00 feet; thence South 89 degrees 22 minutes 47 seconds East 400.00 feet; thence South 00 degrees 37 minutes 13 seconds West 680.00 feet to the North right-of-way of State Road #46; thence on and along said right-of-way South 89 degrees 22 minutes 47 seconds East 1486.36 feet to the **POINT OF BEGINNING**.

The above described parcel contains 805.58 acres and is subject to all easements and right-of-ways of record.

(Ord. 2008-2, passed 5-5-2008) (Am. Ord. 2019-18, passed 9-16-2019)

Statutory reference:

Authority, see I.C. 6-1.1-12.1-1 et seq.

§ 154.005 APPLICATION FOR DECLARING ECONOMIC DEVELOPMENT TARGET AREA OR RESIDENTIAL DISTRESSED AREA.

(A) a Deduction Applicant may file a Designation Application Declaration of an Economic Development Target Area or Residential Distressed Area with the Designating Body on such forms made available by the Designating Body.

(B) All applications shall first be reviewed and considered by the Owen County Chamber of Commerce and Economic Development Corporation and they shall make an advisory recommendation to the Spencer Town Council as to whether the designation shall be granted. The Town shall retain the exclusive authority to determine the eligibility for tax abatements and is not bound by the advisory opinion.

(C) In consideration of providing the above-referenced services, the Owen County Chamber of Commerce and Economic Development Corporation shall charge an application fee of Five Hundred Dollars (\$500.00) to defray its costs and expenses.

(Ord. 2020-13, passed 8-17-2020)

Statutory reference:

Authority, see I.C. 6-1.1-12-1 et seq

§ 154.006 APPLICATION FOR TAX ABATEMENT

(A) A Deduction Applicant may file a Deduction Application with the Designating Body on such forms made available by the Designating Body.

(B) All applications shall first be reviewed and considered by the Owen County Chamber of Commerce and Economic Development Corporation and they shall make an advisory recommendation to the Spencer Town Council as to whether the designation shall be granted. The Town shall retain the exclusive authority to determine the eligibility for tax abatements and is not bound by the advisory opinion.

(C) All recommendations will be based upon a scoring mechanism developed by the Designating Body. Such scoring mechanism may be reviewed and updated annually.

(D) In consideration of providing the above-referenced services, the Owen County Chamber of Commerce and Economic Development Corporation shall charge an application fee of Five Hundred Dollars (\$500.00) to defray its costs and expenses.

(E) The Owen County Auditors shall administer the processing of all state required forms associated with tax abatements.

(Ord. 2008-3, passed 5-5-2008)(Ord Amend 2015-02, passed 2/17/2015)(Am. Ord. 2020-13, passed 8-17-2023)

Statutory reference:

Authority, see I.C. 6-1.1-12-1 et seq

§ 154.007 STATEMENT OF BENEFITS.

(A) In addition to the applications, filing fee and related documents required by §154.005 and §154.006, the owners of real property or new personal property must file a completed statement of benefits form at the time of filing the deduction application.

(B) The provisions of I.C. 6-1.1-12.1-3 shall be followed by the Designating Body when reviewing the documents required by this section.

(Ord. 2020-13, passed 8-17-2020)

Statutory reference:

Authority, see I.C. 6-1.1-12-1 et seq

§ 154.008 COUNCIL'S REVIEW OF APPLICATION; STATEMENT OF BENEFITS; PUBLIC HEARING; DECLARATORY RESOLUTION

(A) The Owen County Chamber of Commerce shall provide the Designating Body its written recommendation, applications, statement of benefits, and any other related documents thirty (30) days prior to any public review of the documentation. The initial review process by the Designating Body will be at a regularly scheduled public meeting.

(B) The Designating Body will review the recommendations, applications, statement of benefits and any other related documents in its public meeting, if the application, and other related documents meets the approval of the Designating Body then the Designating Body shall direct its legal counsel to prepare a Declaratory Resolution.

(C) The resolution shall specify whether the abatement is for real property tax deduction, personal property tax deduction, eligible vacant building deduction, or residential tax deduction, the length of time during which the area shall be so designated, and the general boundaries of the area shall be so designated, and the general boundaries of the area by describing its location in relation to public ways. Upon the adoption of the declaratory resolution, the Designating Body shall file the

resolution with the County Assessor, together with supporting data required by I.C. 6-1.1-12.1-2.5.

(D) Upon adoption of the declaratory resolution, the Designating Body shall schedule a public hearing, cause notice of the adoption to be published pursuant to I.C. 5-3-1, and shall include in the notice information about the adoption of the declaratory resolution, the substance of the resolution, that a description of the affected area is available and can be inspected in office of the Spencer Town Clerk Treasurer, the date when the Council will receive and hear all remonstrances and objections from interested persons, and any other information required by I.C. 6-1.1-12.1-2.5. (Ord. 2020-13, passed 8-17-2020)

Statutory reference:

Authority, see I.C. 6-1.1-12-1 et seq

§ 154.009 CONFIRMATORY RESOLUTION AND MEMORANDUM OF AGREEMENT

(A) Following the legal publication and on the date published in the legal notice, a public hearing on the resolution shall be held by the Designating Body. The petitioner and/or its representative shall be present and shall be required to present evidence why it believes the tax abatement requested should be granted, at which time the Designating Body shall receive and hear all remonstrances and objections from interested persons pertaining to the petition. At the public hearing, the Designating Body shall determine whether the petition complies with this chapter and with I.C. 6-1.1-12.1 et seq. and shall consider all pertinent requirements for prior to taking final action determining whether the petition meets qualifications and confirming, modifying and confirming, or rescinding the declaratory resolution. The determination of Designating Body is final except that an appeal may be taken and heard as provided by I.C. 6-1.1-12.1-2.5(d) and (e).

(B) The Designating Body must make a determination as to whether the deductions shall be allowed and make specific findings pursuant to I.C. 6-1.1-12.1 et seq. The Council must further comply with I.C. 6-1.1-12.1-4.5 and make specific finding thereto when considering personal property tax abatement requests.

(C) Upon adoption of the Confirmatory Resolution by the Designating Body the Deduction applicant must enter into a Memorandum of Agreement. Such agreement shall set forth, in detail, the provisions of the abatement, the abatement schedule, and any other terms and/or conditions such as, but not limited to, claw-back provisions or additional fees allowable by statute.

(D) A copy of the Confirmatory Resolution must be filed with the Owen County Auditor. (Ord. 2020-13, passed 8-17-2020)

Statutory reference:

Authority, see I.C. 6-1.1-12-1 et seq

§ 154.010 REQUIREMENT TO APPEAR AND UPDATE INFORMATION

(A) All property owners who receive approval of their property tax abatement requests as a result of the Designating Body's action under this chapter shall be required to appear before the Designating Body annually following the petitioner's filing of the first certified declaration application with the County Auditor, required by the State Board of Tax Commissioners pursuant to I.C. 6-1.1-12.1-5.

(B) Additionally, the petitioner shall file with the Designating Body its annual reports as required by IC 6-1.1-12.1-5, 5.1, 5.3, 5.4, 5.6, 5.7, 5.8, and 5.9.

(Ord. 2020-13, passed 8-17-2020)

Statutory reference:

Authority, see I.C. 6-1.1-12-1 et seq

§ 154.011 FAILURE OF PETITIONER TO COMPLY MAY RESULT IN FINES BEING IMPOSED AND/OR REPAYMENT OF TAXES PREVIOUSLY ABATED.

(A) The Designating Body believes that the granting of a request for real and/or personal property tax abatement under the terms and conditions of this chapter and the memorandum of agreement constitutes a contractual arrangement between the Designating Body and the property owner granted abatement.

(B) During the term of the abatement, the Designating Body may annually request information from the applicant concerning the nature of the project, the approved capital expenditures for the project, the number of full-time permanent positions newly created by the project, the wage rates and benefits associated with the positions, and any other information necessary to determine compliance with the terms of the abatement, and the applicant shall provide adequate written evidence thereof within 15 days of the request. The Designating Body shall utilize this information and the information required to be filed by the applicant in the CF-1 compliance with statement of benefits form to verify that the applicant has complied with the commitments contained in the memorandum of agreement at all times after the memorandum of agreement date and during the duration of the abatement. The applicant further agrees to provide any additional information requested by the Designating Body related to the information provided in the annual survey and the CF-1 form within a reasonable time

following any such additional request.

(C) The Designating Body reserves the right to terminate the property tax abatement deductions if it determines that the applicant has not made reasonable efforts to substantially comply with all of the commitments.

(D) If the Designating Body terminates the economic revitalization area designation and associated tax abatement deductions, it may require the applicant to repay all or a portion of the tax abatement savings received through the date of the termination. The Town attorney is hereby authorized to pursue all legal actions necessary in the event of the noncompliance or failure by the applicant to perform other duties and responsibilities arising when it agreed to certain contractual obligations by signing the memorandum of agreement.

(E) If at any time during the term of the agreement, whether before or after the commitment date, the applicant shall cease operations at the facility for which the tax abatement was granted; or announce the cessation of operations at the facility, then the Designating Body may immediately terminate the economic revitalization area designation and associated tax abatement deductions, and upon the termination, require applicant to repay all of the tax abatement savings received through the date of the termination.

(Ord. 2020-13, passed 8-17-2020)

Statutory reference:

Authority, see I.C. 6-1.1-12-1 et seq

§ 154.012 FACILITIES NOT AUTHORIZED TO RECEIVE A TAX ABATEMENT FOR REAL PROPERTY

The following facilities are ineligible to receive a tax abatement:

- (A) Golf Courses;
- (B) Country Clubs;
- (C) Massage Parlors;
- (D) Tennis Clubs;
- (E) Skating Facilities;
- (F) Handball or Racquetball Facilities;
- (G) Hot Tub Facilities;
- (H) Suntan Facilities;

- (I) Racetracks;
- (J) Package Liquor Stores holding a Liquor Dealers Permit;
- (K) Any facility that has a primary purpose of retail food and beverage service, automobile sales or service, or other retail unless the facility is located in an economic development target area; or
- (L) Residential facilities unless they are multifamily of which at least 20% of the units are for low-moderate income individuals, in an economic development target area, or are designated as residentially distressed area.

(Ord. 2020-13, passed 8-17-2020)

Statutory reference:

Authority, see I.C. 6-1.1-12-1 et seq

§ 154.013 FEES FOR DEDUCTION

(A) The Designating Body, in its sole discretion, may assess a fee of up to 15% of the additional amount of property taxes that would have been paid by the property owner during the year if the deduction had not been in effect or \$100,00, whichever is lesser.

(B) Fees collected may be distributed to one or more public or non-profit entities established to promote economic development within the limits served by the designating body.

(C) The designating body must notify the County Auditor of the entities that are to receive the distributions.

(D) Failure by the owner to pay the fee may result in a termination of the deduction.

(Ord. 2020-13, passed 8-17-2020)

Statutory reference:

Authority, see I.C. 6-1.1-12-1 et seq

CHAPTER 155: RENTAL HOUSING

Section

Registration and Inspection Program

- 155.01 Purpose
- 155.02 Definitions
- 155.03 Compliance required; application of chapter
- 155.04 Registration of rental units required
- 155.05 Annual registration fees
- 155.06 Registration rental permits
- 155.07 Rental Housing Fund established

- 155.99 Penalty

REGISTRATION AND INSPECTION PROGRAM

§ 155.01 PURPOSE.

The purpose of this chapter is to provide for the registration and inspection of rental residential property, and to facilitate the prevention and correction of violations of laws and ordinances pertaining to rental residential property, so as to protect property values, the public health, safety and welfare of the people of the town, including but not limited to, the following:

- (A) To protect the public health and safety by insuring rental units comply with the town's building codes, property maintenance codes and all other applicable regulations adopted by the State of Indiana or other governmental agency.
- (B) To protect the character and stability of residential neighborhoods.
- (C) To correct and prevent housing conditions that adversely affect or are likely to adversely affect the safety, general welfare and health of the persons occupying dwellings.
- (D) To prevent the overcrowding of rental units.
- (E) To facilitate the enforcement of minimum standards for maintenance of existing residential buildings and, thus, to prevent slums and blight.
- (F) To preserve the value of property, land, and buildings throughout the town.

(Ord. 2017-05, passed 8-21-2017)

§ 155.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates

or requires a different meaning.

ADULT. Every person at least 18 years of age, or younger if emancipated.

DWELLING UNIT. The abode of a family; a single unit providing complete, independent facilities for the exclusive use of the household, including permanent provisions for living, sleeping, eating, cooking and sanitation.

FAMILY. Includes all of the following:

- (1) An individual;
- (2) Two or more individuals related by genetics, marriage, legal adoption, foster care or guardianship, or other comparable relationship established by law; or
- (3) Five or fewer individuals who constitute a relatively permanent functioning group living as a single housekeeping unit.

HABITABLE ROOM. Any room meeting the requirements of this chapter for sleeping, living, or dining purposes, excluding such enclosed places as closets, pantries, bath or toilet rooms, hallways, laundries, storage places, utility rooms and similar spaces.

HOMESTEAD EXEMPTION. An individual's principal place of residence that: the individual owns; the individual is buying under a contract, recorded in the County Recorder's office; provides that the individual is to pay the property taxes on the residence; the individual is entitled to occupy as a tenant-stockholder (as defined in 26 U.S.C. 216, as may be amended) of a cooperative housing corporation; or is a residence described in I.C. 6-1.1-12-17.9 (as may be amended) that is owned by a trust if the individual is an individual described in I.C. 6-1.1-12-17.9 (as may be amended).

MULTI-FAMILY DWELLING. A residential building designed for, or modified to accommodate, more than one independent rental unit.

OCCUPANCY PERMIT. A permit allowing an owner to lease, rent, or otherwise use premises by tenants.

OWNER. Any person having a legal or equitable title in a rental building or premises.

PERSON. A corporation, firm, partnership, association, organization or any group acting as a unit, as well as a natural person. References in the masculine gender include the feminine and the neuter; those in the present tense include the future, and those in the singular include the plural.

PREMISES. A lot, plot or parcel of land containing a rental building or rental unit.

REGISTRATION PERMIT. The permit issued by the town upon registration of each rental unit.

RENTAL BUILDING. A building containing one or more rental units.

RENTAL HOUSING CODE. Sections 155.30 through 155.47 of this chapter.

RENTAL HOUSING OFFICER. That municipal officer charged with the primary responsibility of enforcement of the provisions of this chapter. As set out in § 155.12 hereof, the Spencer Town Clerk-Treasurer shall serve as the Rental Housing Officer.

RENTAL PERMIT. The form issued by the town to an owner upon completing the necessary documentation regarding a rental unit.

RENTAL UNIT. Any rented dwelling unit or rooming unit that does not have a homestead exemption on the property.

RENTAL UNIT COMMUNITY. One or more parcels of contiguous real property upon which are located one or more structures containing rental units, if:

- (1) The combined total of all rental units in all of the structures is five or more rental units; and
- (2) The rental units are not occupied solely by the owner or the owner's family.

ROOMING HOUSE. Any dwelling or that part of any dwelling containing one or more rooming units, in which space is let by the owner or operator to three or more persons who are not related by blood or married.

ROOMING UNIT. Any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

TENANCY AGREEMENT. Includes all agreements, written, oral or implied, and valid rules and regulations embodying the terms and conditions concerning the use and occupancy of a rental unit.

TENANT. Any person entitled to occupy a rental unit under a tenancy agreement to the exclusion of others.

(Ord. 2017-05, passed 8-21-2017)

§ 155.03 COMPLIANCE REQUIRED; APPLICATION OF CHAPTER.

(A) No person shall occupy or maintain a rental unit within the town unless in accordance with the provisions of this chapter. This chapter applies to all rental units located within the town, but shall not apply to the following:

- (1) Occupancy in a single-family, owner-occupied dwelling unit with a homestead exemption.
- (2) Occupancy in a "group home" or "residential institution" as those terms are defined by

state statute.

- (3) Occupancy in federally subsidized and owned housing complexes which have multiple on-site units and which are owned and maintained by the federal government or local housing authority, or scattered site Section 8 housing units administered by a local housing authority.
 - (4) Occupancy by the purchaser of a dwelling unit under a recorded contract of sale.
 - (5) Occupancy in a dormitory or other institute of higher learning.
 - (6) Transient occupancy in a hotel, motel or other similar lodging.
- (B) It shall be the responsibility of each person owning or operating a dwelling unit that the person claims is exempt from this chapter, to produce such documentation or other information as may be requested by the Rental Housing Officer, or his or her designee, so as to permit the Rental Housing Officer or designee to determine whether the dwelling unit is exempt.
- (Ord. 2017-05, passed 8-21-2017)

§ 155.04 REGISTRATION OF RENTAL UNITS REQUIRED.

- (A) No owner of real estate within the town shall use that real estate for the purpose of erecting or maintaining a rental unit thereon after July 31, 2017, without registering each rental unit with the town and obtaining a rental permit. All existing rental units shall be registered and obtain a rental permit with the town by July 31, 2017. The registration shall be effected by furnishing to the town a complete and accurate application, upon forms prescribed by the town, setting forth the following information:
- (1) The name of the owner;
 - (2) The address of the owner;
 - (3) The street address of the rental unit;
 - (4) The number of rental units on the property; If the owner is not an individual, or a resident of Owen County, Indiana, or a county contiguous to Owen County, the name, address and telephone number of the owner's agent authorized to receive notification of complaints, damages, emergencies, substandard conditions or other communications, including service of process. The address of any and all agents shall be within Owen County or a contiguous county. Any owner who does not reside in Owen County, Indiana, or a contiguous county shall be required to designate an agent.
 - (5) A current email and telephone number of the owner and/or agent.

(B) The registration application shall be signed by the owner. Whenever ownership of a rental unit or group or complex of rental units changes, the new owner shall have the responsibility to report the change in ownership to the town. Upon completion of an initial registration of the unit, a rental permit shall be issued for the rental unit, and shall remain valid and not expire until a change of ownership. Previously issued rental permits shall automatically expire 30 days following transfer of title to a registered property.

(C) Notification to the owner or his or her agent at the address shown on the registration application shall constitute sufficient notice pursuant to any provision of this chapter. Registration of a rental unit shall be evidenced by issuance of a rental permit.

(Ord. 2017-05, passed 8-21-2017) Penalty, see § 155.99

§ 155.05 ANNUAL REGISTRATION FEES.

There shall be a \$5 annual registration fee assessed for each rental unit, except as provided in I.C. 36-1-20-5 (as may be amended), located within the town after the initial registration and obtaining of a rental permit. The above-referenced registration fee shall be paid on or before January 31 of each year after a rental permit has been obtained.

(Ord. 2017-05, passed 8-21-2017) Penalty, see § 155.99

§ 155.06 REGISTRATION RENTAL PERMITS.

All rental units in the town shall obtain and maintain a valid rental permit, except for a rental unit community, which is required to obtain one rental permit for the complex as per I.C. 36-1-20-3.5 (as may be amended). For all registered rental units, the town shall issue a rental permit stating the date of the unit's registration. The owner of each rental unit shall be responsible for continuously maintaining a copy of the certificate. Each owner shall provide the Rental Housing Officer, or his or her designee, with a copy of the rental permit upon request. A rental permit shall otherwise remain in effect and not expire until suspended or revoked as set forth in this chapter. The issuance of a rental permit is not evidence that a property meets the requirements of this chapter or is otherwise fit for human habitation.

(Ord. 2017-05, passed 8-21-2017) Penalty, see § 155.99

§ 155.07 RENTAL HOUSING FUND ESTABLISHED.

(A) The Spencer Town Board hereby establishes a Rental Housing Non-Reverting Fund as required by I.C. 36-1-20-3 (as may be amended).

- (B) The Rental Housing Officer, and/or his or her designee(s), shall have the authority for the collection, allocation and expenditure of all costs associated with the administration of the rental housing program.

(Ord. 2017-05, passed 8-21-2017)

§ 155.99 PENALTY.

- (A) For submitting any other false or materially incomplete information on an application or any other information submitted under this chapter, a fine of up to \$1,000, unless the violator has been convicted of a previous violation for submitting any other false or materially incomplete information on an application or any other information submitted under this chapter, in which case the fine may be up to \$2,500.
- (B) For failure to maintain a rental permit pursuant to § 155.06, a fine of up to \$500, unless the violator has been convicted of a previous violation for failing to maintain a rental certificate, in which case the fine shall be up to \$1,000.
- (C) For failure to timely sign or submit a complete registration application, a fine of up to \$100. Each day a violation of this provision exists or continues to exist constitutes a separate and distinct violation of this chapter, with maximum fine of \$7,500.
- (D) For rental of any dwelling unit without first obtaining or continuing to have a valid registration permit, a fine of up to \$100, unless the violator has been convicted of previous violation involving renting without a registration permit, in which case the fine shall be up to \$500. Each day a violation of this provision exists or continues to exist constitutes a separate and distinct violation of this chapter.
- (E) A person may appeal the determination of the Rental Housing Officer with respect to any determination as to registration and rental permit outlined in this chapter, within ten business days from notice to the owner of the property, based upon the information provided as part of the registration or by use of the address used for tax purposes as maintained by the Owen County Treasurer.
- (F) If fines are imposed or inspection fees are not paid, then the Town Attorney's Office shall file liens upon the property for the outstanding balances due. Any such action required for the collection of said liens will be subject the violator additional fees for court costs and attorney fees associated with collection of the lien.

(Ord. 2017-05, passed 8-21-2017)

CHAPTER 156: REDEVELOPMENT COMMISSION

Section

- 156.01 Title
- 156.02 Purpose
- 156.03 Jurisdiction
- 156.04 Commissioners
- 156.05 Meetings
- 156.06 Conflict of Interest
- 156.07 Duties
- 156.08 Powers
- 156.09 Reporting Requirements

§156.01 TITLE

A redevelopment department is hereby established pursuant to the provisions of this section and IC 36-7-14 *et seq.* and said department shall be governed by a five (5) member board to be known as the “Town of Spencer Redevelopment Commission.”

(Ord. 2014-08, passed 11/7/2014)

§156.02 PURPOSE

The purpose of this ordinance is to develop plans and manage tools used to address conditions of blight and underutilized land of economic significance.

(Ord. 2014-08, passed 11/7/2014)

§156.03 JURISDICTION

The provisions of this ordinance shall apply to all of the territory within the corporate boundaries of the Town of Spencer, Indiana and shall constitute a taxing district for the purpose of levying and collecting special benefit taxes as provided in IC 36-7-14 *et seq.*

(Ord. 2014-08, passed 11/7/2014)

§156.04 COMMISSIONERS

- (A) Qualifications (voting or non-voting)

- (1) Must be eighteen (18) years of age or older; and,
- (2) Must be a resident of the Town of Spencer, Indiana.

(B) Appointment of Commissioners

- (1) The Town of Spencer Redevelopment Commission shall consist of five
 - (5) voting commissioners that shall be appointed as follows:
 - (a) Three (3) commissioners shall be appointed by the Town Executive.
 - (b) Two (2) commissioners shall be appointed by the Legislative Body.
- (2) The Town of Spencer Redevelopment Commission shall also consist of one (1) non-voting advisor appointed by the Spencer Town Board. The non-voting advisor must:
 - (a) Be a member of the school board of a school corporation that includes all or part of the territory served by the Redevelopment Commission.
 - (b) Not be a commissioner of the Redevelopment Commission for the purposes of this chapter but is entitled to attend and participate in the proceedings of all meetings of the redevelopment commission.
 - (c) Shall serve at the pleasure of the entity that appointed them.

(C) Term

- (1) Each voting commissioner shall serve for one (1) year from the first day of January after his appointment until his successor is appointed and qualified, except that the original commissioners shall serve from the date of their appointment until the first day of January in the second year after their appointment. Should a vacancy occur, a successor shall be appointed in the same manner as the original commissioner, and the successor shall serve for the remainder of the term.
- (2) The non-voting advisor shall serve for a term of two (2) years and until a successor is appointed.

(D) Oath

- (1) Each commissioner shall take and subscribe an oath of office in the usual form, to be endorsed on the certificate of his appointment, which shall promptly be filed with the Clerk of the Owen Circuit Court.

(E) Bond

- (1) Each commissioner shall, before beginning his duties, execute a bond payable to the state, with surety to be approved by the Spencer Town Board, in the penal sum of fifteen thousand dollars (\$15,000.00). The bond must be conditioned on the faithful performance of the duties of his office and the accounting for all monies and property that may come into their hands or under their control. The cost of the bond shall be paid by the special taxing district.

(F) Salaries, Per Diem, and Reimbursement of Expenses

- (1) A Commissioner who does not otherwise hold a lucrative office for the purposes of *Article 2, Section 9 of the Indiana Constitution* may receive:
 - (a) A salary; or
 - (b) A per diem;
 - (c) Is entitled to reimbursement for expenses necessarily incurred in the performance of the redevelopment commissioner's duties.
- (2) A non-voting advisor is not entitled to a salary, per diem, or reimbursement of expenses.

(G) Removal

- (1) Spencer Town Board may remove a commissioner from office at any time.
- (2) Removal may be with or without cause.

(Ord. 2014-08, passed 11/7/2014)

§156.05 MEETINGS

(A) Election of Officers:

- (1) Not later than thirty (30) days after the appointment of the commissioners the Redevelopment Commission shall hold a meeting for the purposes of organization. Thereafter, the Commission must hold at least one (1) annual meeting on the first day of January, that is not a Saturday, Sunday, or legal holiday for the election of a president, a vice president, and a secretary.
- (2) The Redevelopment Commission may also appoint a Treasurer, who need not be a commissioner or member of the redevelopment commission. The Treasurer may be compensated. The Treasurer shall be responsible for the administration, investment, and disbursement of all funds and accounts of the Redevelopment

Commission in accordance with the requirements of IC 36-7-14 et seq. However, the Treasurer may not perform any duties of the fiscal officer or any other officer of Owen County that are prescribed by IC 36-7-14-24 or by any provisions that pertain to the issuance and sale of bonds, notes, or warrants of the special taxing district.

(B) Rules and Bylaws

- (1) The Redevelopment Commission may adopt the rules and bylaws it considers necessary for the proper conduct of its proceedings, the carrying out of its duties, and the safeguarding of the money and property placed in its custody by IC 36-7-14 et seq.

(C) Meetings

- (1) At the annual meeting (referenced above) the commission by resolution or in accordance with its rules and bylaws, prescribe the date and manner of notice of other regular or special meetings.
- (2) All meetings of the Redevelopment Commission shall be held in accordance with Indiana's Open Door Law.

(D) Quorum

- (1) Three (3) of the redevelopment commissions commissioners constitute a quorum, and the concurrence of three (3) members is necessary to authorize any action.

(Ord. 2014-08, passed 11/7/2014)

§156.06 CONFLICT OF INTEREST

A Redevelopment Commissioner or a non-voting advisor appointed under this Ordinance or under the provisions of IC 36-7-14-6.1 may not have a pecuniary interest in any contract, employment, purchase, or sale made under this chapter. However, any property required for redevelopment purposes in which a commissioner or non-voting advisor has a pecuniary interest may be acquired, but only by give or condemnation.

(Ord. 2014-08, passed 11/7/2014)

§156.07 DUTIES

The duties of the Redevelopment Commission are governed by the provisions of IC 36-7-14 *et seq.* and any amendments thereto.

(Ord. 2014-08, passed 11/7/2014)

§156.08 POWERS

The powers of the Redevelopment Commission are governed by the provisions of IC 36-7-14 *et seq.* and any amendments thereto.

(Ord. 2014-08, passed 11/7/2014)

§156.09 REPORTING REQUIREMENTS

(A) Within thirty (30) days after the close of the calendar year, the redevelopment commissioners shall file with the Spencer Town Board a report setting out their activities during the preceding calendar year. The report shall include the following:

- (1) The names of the then qualified and acting commissioners, including any removed from office;
- (2) The names of the officers;
- (3) The number of regular employees, if any, and their fixed salaries and compensation;
- (4) The amount of expenditures made during the preceding year and there general purpose;
- (5) The amount of funds on hand at the close of the calendar year
- (6) Any other information necessary to disclose the activities of the commissioners and the results obtained.

(Ord. 2014-08, passed 11/7/2014)